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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1194.

THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, JESSE SELIGMAN AND JAMES SELIGMAN, PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

WILLIAM C. WILSON.

IN ERROR TO AND APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 4, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, at the September term, 1884, thereof, between William C. Wilson, plaintiff, and The St. Louis & San Francisco Railway Co. and Jesse Seligman and James Seligman, defendant-, a manifest error hath happened, to the great damage of the said defendant-, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] A. P. SELBY,
Clerk Circuit Court United States, Eastern District of Missouri.

Allowed by—
SAM. F. MILLER, *Judge.*

2 *Return to Writ.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at office in the city of St. Louis, this 6th day of October, A. D. 1884.

[SEAL.] A. P. SELBY,
Clerk of said Court.

[Endorsed:] No. 2415. United States circuit court, eastern district of Missouri. William C. Wilson *vs.* St. Louis & San Francisco

R'y Co. *et al.* Writ of error to the circuit court of the U. S., eastern district of Missouri. Returned and filed 29th day of Sept'r, 1884. A. P. Selby, clerk.

3 The United States of America to William C. Wilson, Greeting

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1877, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein The St. Louis & San Francisco Railway Company and Jesse Seligman and James Seligman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, judge of the circuit court of the United States for the eastern district of Missouri, this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

SAM. F. MILLER,
Judge United States Circuit Court, Eastern District of Missouri.

Citation waived. Service accepted.

WM. C. WILSON.

[Endorsed:] No. 2415. United States circuit court, eastern district of Missouri. Wm. C. Wilson *vs.* St. Louis & San Francisco Railway Co. *et al.* Citation. Filed Sept. 20, 1884. A. P. Selby, clerk.

3½ UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

Be it remembered that on the 11th day of September, A. D. 1884, the following, among other proceedings, were had and appear of record in said court, to wit:

WILLIAM C. WILSON, Plaintiff,
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JAMES SELIGMAN, and JESSE SELIGMAN, Defendants.

Now comes defendants, by Jas. O. Broadhead, Esq., their attorney, and file transcript from St. Louis circuit court, and enter their appearance herein.

Said transcript is in words and figures following, to wit:

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered that heretofore, to wit, on the 23d day of February, 1884, there was filed in the office of the clerk of the circuit

court, city of St. Louis, a petition wherein William C. Wilson is plaintiff and The St. Louis and San Francisco Railway Company, James Seligman, and Jesse Seligman are defendants, which petition, together with the summons and the sheriff's return thereon, are respectively in the words and figures following, to wit:

Petition.

In the Circuit Court of the City of St. Louis, State of Missouri. To the April Term, A. D. 1884.

4 WILLIAM C. WILSON, Plaintiff,
against
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JAMES SELIGMAN, and JESSE SELIGMAN, Defendants.

William C. Wilson, plaintiff herein, by Batsford & Williams, his attorneys, complaining of the defendants, The St. Louis and San Francisco Railway Company, James Seligman, and Jesse Seligman, for his cause of action, states:

I. That at the times hereinafter mentioned plaintiff was, and now is, a citizen of the State of Missouri and a resident of the city of St. Louis; that defendant, The St. Louis and San Francisco Railway Company, was ever since then, hitherto has been, and now is, a corporation duly organized and existing under the general laws of the State of Missouri under its corporate name aforesaid; and that defendants, James Seligman and Jesse Seligman, were, and now are, citizens and residents of the State of New York, doing business in the city of New York under the firm name of J. & W. Seligman & Co.

II. That said defendant corporation is the owner of and operates a line of railway from the city of St. Louis in a southwesterly direction through the State of Missouri to the southern and western boundaries of said State, connecting with the Atlantic and Pacific railroad, constructed and in process of construction from the western boundary line of said State westwardly to the city of San Francisco, in the State of California, and in the construction of which railroad said defendant corporation is largely interested; that the capital stock of said defendant corporation, amounting in the aggre-
5 gate to twenty-five million of dollars is, and at said times was, divided into first preferred, preferred, and common stock, consisting of shares of one hundred dollars each.

That the first preferred stock of said corporation to the amount of four million five hundred thousand dollars, divided into shares as aforesaid, was, and is, entitled to a dividend of seven per cent. per annum after the payment of all expenses, improvements, and interest on the funded debt of said company; that the preferred stock of said corporation to the amount of ten million of dollars, divided into shares as aforesaid, was, and is entitled to dividends of seven per cent. per annum after payment of all expenses, interest, dividend on first preferred stock; and that the common stock of said company to the amount of ten million of dollars, divided into shares

as aforesaid, was and is entitled to dividends at the rate of seven per cent. per annum after the payment of the dividends on said first preferred and preferred stock aforesaid, and that any excess of the annual surplus earnings of said corporation over and above the amounts necessary to pay said dividends as aforesaid is to be applied at the uniform rate of seven per cent. per annum on all the stock of said corporation *pro rata*.

III. That by the requirements of its charter said corporation was at said times, and now is, required to maintain a public office or place in this State for the transaction of its business, where transfers of its capital stock aforesaid shall be made, and where shall be kept for public inspection books in which shall be recorded the amount of the capital stock subscribed to said corporation, the names of the owners of said stock, the amounts owned by them, respectively, the amount of stock paid and by whom, the transfer of said stock with the date of such transfer; that said capital stock of said corporation was, and now is, personal property, and that by its said charter said corporation was authorized to make by-laws for the transfer
6 of its said capital stock on said books of said corporation; and plaintiff charges and avers that on the first day of January, 1883, and thereafter, up to the time of the commencement of this suit, said corporation had and maintained a public office in the city of St. Louis, in said State of Missouri, for the transaction of its business, where transfers of its capital stock were and are made in books kept by said corporation for that purpose as required by law; and that by the by-laws of said corporation, duly made and then, and now in full force and effect, no transfer of its said stock should be valid except between the parties thereto or allowed, except the same be made on its said stock books by the stockholder in person or by a properly constituted attorney whose power shall be duly executed and filed with the company, and that at the time of any such transfer of any of said stock the old certificate thereof shall be surrendered and cancelled before new certificates be issued therefor.

III. *a*. That heretofore, to wit, on the 2d day of August, A. D. 1883, and for many years prior thereto, and from that time continuously up to and after the judgment, execution, levy, and sale thereunder, as hereinafter stated, at said city of St. Louis aforesaid, there stood on said stock books of said defendant corporation, as the property of the said defendants, James Seligman and Jesse Seligman, and held by them in their said firm name of J. & W. Seligman & Co., as the owners thereof, one hundred and twenty shares of said first preferred, two thousand one hundred and seventy shares preferred, and five thousand one hundred and fifty shares of the said common stock of said defendant corporation, in the sum of one hundred dollars for each share thereof; that no transfers of said shares of stock on said stock books of said corporation at or since
7 said date last aforesaid had or has been made by said defendants, James and Jesse Seligman, or either of them, in person or by any authorized attorney, and plaintiff charges and avers that said defendants, James and Jesse Seligman, were at said times the

owners of said shares of stock aforesaid so held in the firm name of J. & W. Seligman & Co.

IV. That heretofore, to wit, on the 2d day of April, A. D. 1883, in the circuit court of the city of St. Louis, in the State of Missouri, judgment was duly rendered in favor of this plaintiff in a certain cause therein pending, wherein this plaintiff was plaintiff and the Memphis, Carthage and Northwestern Railroad Company was defendant, for the sum of seventy-two thousand seven hundred and ninety-nine & $\frac{38}{100}$ dollars for his damages, with interest at the rate of six per cent. per annum, and costs and charges in that suit expended; upon which said judgment execution duly issued against said last-named defendant to the sheriffs of Jasper, Newton, and Lawrence counties and the city of St. Louis, and were by them duly returned unsatisfied, for the reason that no property of said defendant could be found out of which to levy the same, in whole or in part.

That afterwards, to wit, on the 3rd day of December, A. D. 1883, in a certain proceeding then duly pending in said circuit court in said cause of this plaintiff against said defendants herein, James and Jesse Seligman, for an execution against said defendants, James and Jesse Seligman, as stockholders of said Memphis, Carthage and Northwestern Railroad Company, said circuit court duly found that at the date of the rendition of said judgment and the issue and return of said executions said Jesse and James Seligman, the defendants in said proceeding, were stockholders of said Memphis, Carthage & Northwestern Railroad Company, owning and holding as such sixty thou-
8 sand shares of the stock of said company of the par value of one hundred dollars each; that there then remained unpaid upon such sixty thousand shares of stock the sum of five million dollars, and that there remained due and unpaid upon said judgment of this plaintiff the sum of seventy-five thousand eight hundred and thirty-eight dollars; and thereupon said court in said proceeding duly ordered and adjudged that the same be sustained, and that execution issue in favor of said plaintiff against said Jesse and James Seligman for said sum of seventy-five thousand and eight hundred and thirty-eight dollars, and costs of said proceeding, which said execution was, on the day last aforesaid, duly issued out of the office of the clerk of said circuit court, under the seal of said court, directed to the sheriff of said city of St. Louis, in due form of law, returnable on the first Monday of February next thereafter, and delivered to him on said day last aforesaid, commanding him, the said sheriff, that of the goods and chattels and real estate of said Jesse and James Seligman, he, the said sheriff, cause to be made the said sum as awarded against said Jesse and James Seligman in said order for said execution, to wit, the sum of $75,838.00 damages, with interest and costs, by virtue and authority of which said execution said sheriff, on the said 3rd day of December, duly levied upon and seized all the right, title, and interest of said Jesse and James Seligman of, in, and to said capital stock, to wit, one hundred and twenty shares first preferred, two thousand one hundred and seventy shares preferred, and five thousand one hundred and fifty shares common

stock of defendant corporation, The St. Louis and San Francisco Railway, so held, in the name of J. & W. Seligman & Co., on
9 the stock books of said company as aforesaid, by leaving a true copy of said writ of execution on said 3rd day of December, A. D. 1883, with Alexander Graydon, the cashier of said defendant corporation, at its chief office and place of business in said city of St. Louis aforesaid, said cashier having the custody and keeping of the stock and transfer books of said corporation, with an attested certificate by said sheriff, that he levied upon and took such rights and shares to satisfy said execution, and said sheriff having previously to the day of sale hereinafter mentioned duly given at least ten days' public notice of the day, time, terms, and place of sale, and of the personal property to be sold, as the law directs, by at least three printed advertisements signed by said sheriff, put up in public places in said city of St. Louis, by virtue of said execution and notice of said sale, did on Tuesday, the 18th day of December, A. D. 1883, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at the east front door of the court-house in said city of St. Louis and State of Missouri, and during the session of said circuit court of said city of St. Louis, at the December term, A. D. 1883 thereof, expose to sale at public auction for cash, to the highest bidder, all the right, title, interest, and claim of the above-named Jesse and James Seligman of, in, and to the above described personal property to satisfy said execution and costs, and this plaintiff being then and there the highest and best bidder for said personal property at the price and sum of twenty-five cents per share for each and every share of said common and preferred stock of the St. Louis and San Francisco Railway Company, and fifty cents per share for each and every share of the first preferred stock
10 of said St. Louis and San Francisco Railway Company so held in the name of Jesse and James Seligman as aforesaid, on the stock ledger of said railway company, said shares of stock were then and there stricken off and sold to this plaintiff at the prices aforesaid, to wit:

One hundred and twenty shares of said first preferred stock of said St. Louis and San Francisco Railway Company, so held in the name of J. & W. Seligman & Co., at fifty cents per share; two thousand one hundred and seventy shares preferred and five thousand one hundred and fifty shares common stock of said St. Louis and San Francisco Railway Company, so held in the name of J. & W. Seligman & Co., at twenty-five cents per share; that plaintiff, on said day last aforesaid, duly paid to said sheriff the said sum of twenty-five cents per share for each and every such share of said common and preferred stock so stricken off to him at said sale by said sheriff as aforesaid, and the said sum of fifty cents per share for each and every share of said first preferred stock so stricken off to him as aforesaid; and thereupon said sheriff, on said 18th day of December, 1883, by virtue of the authority in him vested by law, duly made, executed, and delivered to this plaintiff an instrument of writing reciting said sale of said shares of stock to this plaintiff, the payment by him of the consideration aforesaid therefor, and

thereby sold, assigned, transferred, and conveyed to this plaintiff as such purchaser aforesaid, all of said shares of stock so sold by him as aforesaid, and all the right, title, and interest which the said Jesse and James Seligman had in and to the same on said 3d day of December, A. D. 1883, and on the same day duly made his return of said sale on said execution, as will more fully appear from a duly certified copy of said judgment, award of execution, and
11 proceedings thereunder hereto attached and made a part of this petition, a true copy of which said execution and said sheriff's return was by him, the said sheriff, duly left and lodged with Alexander Graydon, the then cashier of such defendant corporation, at its said principal office and place of business in said city of St. Louis aforesaid, the said Graydon then and there having charge, custody, and control of the stock books of said defendant corporation, The St. Louis and San Francisco Railway Company, and that thereupon plaintiff became, and was thereafter at all times, entitled to all dividends and stock, and to the same privileges as a member of said defendant corporation, as said Jesse and James Seligman or either of them was entitled to at the time of said levy and said sale aforesaid.

That thereafter, and on said 19th day of December, A. D. 1883, plaintiff duly exhibited to the defendant corporation, at its said chief office and place of business aforesaid, his said certificate of purchase of said shares of its capital stock at said execution sale of said defendants, Jesse and James Seligman, then and there standing in the name of said J. & W. Seligman & Co. on the said stock books of said company, and duly demanded in writing of said defendant corporation that it cause the name of this plaintiff to be entered on the stock books of said corporation as the owner of said shares of capital stock of said defendant corporation, and further duly notified said corporation to pay to this plaintiff all dividends that might thereafter be declared and payable to and on said stock, a true copy of which said request and demand is herewith filed, marked "Exhibit B," and made a part of this petition.

12 VI. That said defendant corporation then and there refused, and has ever since hitherto neglected and refused, and now refuses, to enter upon the stock books of said corporation the name of this plaintiff as the owner of said shares of its capital stock, or any part thereof or share thereof, or to issue to him such certificates of stock, although said plaintiff has repeatedly demanded that his name be entered upon said stock books as such owner, and that new certificates of stock be issued to him as such owner thereof.

And plaintiff charges and avers that said defendants herein, combining and conspiring together to defraud this plaintiff in the premises, and to render the said judgment, award of execution, levy and sale of said stock wholly unavailing to him, and to prevent him from receiving the benefits of his purchase thereof or to exercise the rights and privileges of a member of said defendant corporation as such purchaser, falsely pretending that said Jesse and James Seligman were not the owners of said stock at the time of the levy of said execution thereon, did on the day and at the time and place of

said sale, to wit, on the 18th day of December, 1883, cause to be openly and publicly read by the attorneys of each of said defendants, the said defendant corporation appearing by John O'Day, its general solicitor, and defendants, Jesse and James Seligman, appearing by James O. Broadhead, their attorney, and combining, conspiring, and confederating together as aforesaid, at the time and place said sale was to take place, and before the same was made, a written and printed notice, falsely stating therein that although said stock at the time of said sale stood on the books of said defendant corporation in the name of J. & W. Seligman & Co., the fact was
13 that the said stock and certificates thereof were sold and transferred by said J. & W. Seligman & Co. to other parties long before the issuing of said execution or the levy thereof, and that neither the said Jesse or James Seligman nor the said firm of J. & W. Seligman & Co. at the time of the issuing of said execution or the levy thereof, or at the time of said sale, owned nor had they or either of them any ownership or interest in said stock so levied upon as aforesaid, and that by reason of said false and fraudulent representations aforesaid of said defendants bidders were deterred from bidding on said stock at said sale, and the same was sold to this plaintiff at the price and sum aforesaid.

VII. That said defendant corporation, since the purchase by and sale to this plaintiff of the shares of capital stock of said Jesse and James Seligman as aforesaid, and prior to the commencement of this action, under the requirements of its charter, has given public notice that the annual meeting of the stockholders of said corporation will be held at the office of the company in the city of St. Louis, on Tuesday, the 11th day of March, 1884, at nine o'clock a. m., for the election of thirteen directors for the ensuing year, and for the transaction of any other business that may come before said meeting; that the annual meeting of the board of directors will be held at the same place at two o'clock p. m. on same day, and that the transfer books of said company will be closed on Saturday, February 9th, 1884, at three o'clock p. m., and will be reopened on Thursday, March 13th, 1884, at ten o'clock a. m.; and plaintiff avers that said transfer books of said corporation, in which is contained the list of the persons in whose names the shares of stock of said corporation stand as the owners, of
14 said stock, were closed on said 9th day of February, 1884, by said corporation in pursuance of said notice, and that at the time of the closing of said books the names of said defendants, Jesse and James Seligman, under their said firm name of J. & W. Seligman & Co., stood on said transfer books as the owners of the stock so bought by this plaintiff as aforesaid, and at and up to the time of said closing of said transfer stock books said defendant corporation refusing to place plaintiff's name on said transfer stock book as such purchaser and owner of said shares of stock, said defendant corporation and said Seligmans craftily and fraudulently intending thereby to prevent this plaintiff from being qualified as a stockholder in such corporation, and from exercising the rights and privileges of a member of such corporation, and from taking any part or participating

in or in voting at said meeting of said stockholders as a member of such corporation, as by his said purchase he is lawfully entitled so to do.

And plaintiff is informed and verily believes and so charges the facts to be that said defendants, Jesse and James Seligman, by the concurrence, connivance, collusion, and consent of said defendant corporation, and its officers, claiming to hold the legal title to said shares of stock so sold to this plaintiff as aforesaid, and thus standing on the said transfer stock books of said defendant corporation in the name of J. & W. Seligman & Co., are now and ever since said sale hitherto have been exercising the rights and privileges as members of said corporation by reason thereof, and that said defendants, James and Jesse Seligman, at said meeting of said stockholders and at the election of such directors so advertised to be held as aforesaid,
15 will, unless otherwise restrained by this court, with the consent, collusion, and connivance of said defendant corporation and its officers, vote all of said stock as shareholders in said corporation by reason of the same standing on said transfer stock books of said corporation in their firm name as aforesaid. And plaintiff further states that he is informed, and verily believes, and therefore charges, that out of the surplus earnings of said defendant corporation for the year ending February 1st, 1884, there is entitled to be paid on said shares of first preferred and preferred stock an annual dividend on said first day of February, 1884, but as to whether such dividend had been declared by said defendant corporation this plaintiff has no knowledge or information sufficient to form a belief, and that plaintiff, as the owner of said shares aforesaid, is entitled to have the same paid to him, and that he has duly demanded of said defendant corporation that it inform him as to whether such dividend has been declared or not, and the payment of said dividend to himself as such owner, but that said defendant corporation has refused, and still refuses, to pay said dividend or any part thereof to this plaintiff as such owner, or to inform him as to whether such dividend has been declared by said corporation. And plaintiff avers that said defendant corporation will, unless otherwise restrained by this court, pay all of such dividends to said defendants, Jesse and James Seligman, as the holders on said transfer stock books of said corporation of said shares of first preferred and preferred stock.

Plaintiff further avers that the property, rights, privileges, and franchises of said defendant corporation are worth many
16 millions of dollars; that said defendant corporation is a growing corporation, engaged in the operation and construction of over one thousand miles of railway, and that the business of said corporation is of great magnitude, and constantly increasing in value and importance; that the present market value of said shares of stock so purchased by him as aforesaid is much less than the par value thereof, and that its future value will greatly increase by a prudent and careful management of the business of said corporation; that by reason of the acts and doings of defendants in the premises the value of plaintiff's said stock is greatly impaired; that he is thereby prevented from having new shares of stock issued to

him and from exercising any of the rights and privileges of a member of said corporation, or of participating in the meetings of the stockholders thereof, or of receiving any benefit from said stock as the owner thereof; that said Jesse and James Seligman are non-residents of the State of Missouri, so that the ordinary process of law cannot be served upon them, and the property, real and personal, of said defendant corporation in this State is so encumbered by liens, mortgages, and deeds of trust that a judgment at law against it would be of doubtful value to plaintiff, and that unless he is granted the equitable interference of this court in the premises he will be without any adequate remedy at law for the manifold wrongs, injuries, and misdoings of said defendants herein complained of, so that his said shares of stock will be rendered wholly worthless to plaintiff, and he will thereby suffer irreparable damage from said wrongful acts of defendants.

Wherefore plaintiff prays:

I. That said defendant corporation may be compelled by the order and decree of this court to place said plaintiff's name
17 on the transfer stock books of said corporation as the owner of said shares of first preferred and preferred and common stock of said corporation so purchased by him as aforesaid, and to issue to this plaintiff certificates for all of said shares of stock as such owner.

II. That said defendant corporation be required and directed to pay to this plaintiff all dividends that may be due or become due and payable on said stock since the said 18th day of December, 1883, and that it be ordered and decreed to allow and permit plaintiff to exercise all the rights and privileges of a member of said corporation as the owner of said shares of stock to participate in and vote said shares of stock at said meeting for the election of said directors, and to participate in and vote at all other meetings of said stockholders of said corporation, and that said defendant corporation be enjoined in the meantime from permitting the other defendants herein to exercise any such rights and privileges as stockholders by reason of said stock so standing on the transfer books of said corporation in the said firm name of J. & W. Seligman & Co.; that all the right, title, and interest which the said Jesse and James Seligman had in and to said shares of capital stock so purchased by plaintiff as aforesaid be decreed to be in plaintiff by reason of his said purchase and as the owner thereof; that said defendants, Jesse and James Seligman, be enjoined and restrained from exercising the rights of stockholders in said corporation as the holders or owners of said stock, or from claiming any right or title to the same, or to vote the same at any meeting of said stockholders of said corporation, or from receiving any dividends thereon, and that they be required to deliver up for cancellation all the said
18 shares of stock issued to them and standing in the said firm name of J. & W. Seligman & Co., and for such other and further general relief in the premises as may be just and equitable.

BOTSFORD & WILLIAMS,
Attorneys for Plaintiff.

STATE OF MISSOURI, } ss:
City of St. Louis, }

William C. Wilson, being duly sworn, on his oath states: That he has read the foregoing petition and knows the contents thereof, and the same is true, as he verily believes.

WILLIAM S. WILSON.

Subscribed and sworn to before me, this 23d day of February, A. D. 1884.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Summons against St. Louis and San Francisco Railway Co.

CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

We command you to summon the St. Louis and San Francisco Railway Company to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis on the first Monday of April next, then and there to answer the complaint of William C. Wilson, as set forth in the annexed petition, and have you then and there this writ

Witness Charles F. Vogel, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this
19 27th day of February, in the year of our Lord eighteen hundred and eighty-four.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Sheriff's Return.

Executed this writ, in the city of St. Louis, on the first day of March, 1884, by delivering a copy of the writ and petition, as furnished by the clerk, to C. W. Rogers, 1st vice-president of the St. Louis and San Francisco Railway Company, the within-named defendant, who was in the business office of said company and had charge thereof at the time of said service. The president or any other higher chief officer cannot be found in the city of Saint Louis at the time of said service.

ISAAC N. MASON, *Sheriff,*
By CHAS. M. GUEHNE, *Deputy.*

Fee, $1.00.

Attached to a copy of the foregoing petition appears a summons for the defendants, James and Jesse Seligman, which summons and the return of service thereof are in words and figures following, to wit:

Summons against James Seligman and Jesse Seligman.

CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, Greeting:

We command you to summon James Seligman and Jesse Selig-

man to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis on the first Monday of April next, then and there to answer the complaint of Wm. C. Wilson, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles F. Vogel, clerk of our said court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this
20 26th day of February, in the year of our Lord eighteen hundred and eighty-four.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Sheriff's Return.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, George E. Simons, deputy sheriff in and for the city and county of New York, in said State, being duly sworn, state: That on the 29th day of February, A. D. 1884, I delivered personally to each of the within named James Seligman and Jesse Seligman, in said city and county and State of New York, a true copy of the petition, with a true copy of the summons in the within cause of William C. Wilson against the St. Louis and San Francisco Railway Company, James Seligman, and Jesse Seligman, as certified by the clerk of the circuit court for the city of St. Louis, Missouri, in which said cause is pending.

GEORGE E. SIMONS,
Deputy Sheriff.

Sworn to and subscribed before me, the undersigned, clerk of the court of common pleas for the said city and county of New York, and I do further certify that said affiant, viz., George E. Simons, is, and was at the time of the service of said process mentioned in the foregoing affidavit, deputy sheriff in and for said city and county of New York, duly authorized as such by the laws of the State of New York to execute mesne and final process in all suits of a civil nature in said court of common pleas as the deputy sheriff and officer of the said court of common pleas; and I further certify that said authority of said deputy sheriff, as the officer of said court of common pleas, which is one of the courts of general jurisdiction in civil cases in and for said city and county of New York to exe-
21 cute mesne and final process in such cases, extends throughout the said city and county of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of common pleas. Done at my office in said city and county of New York, this 29th day of February, A. D. 1884.

[SEAL.] NARTHE JARRIS, JR., *Clerk.*

Fees 7.50. Paid by plaintiff.

And afterwards, at a special term of said circuit court, being the

April term, 1884, thereof, the following proceeding was had in said cause, to wit:

Motion for Security for Costs Confessed.

TUESDAY, *April 8th*, 1884.

WILLIAM C. WILSON
vs. } 64034.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY.

Motion for costs filed. On motion, twenty days' time given J. & J. Seligman to plead.

Now comes plaintiff and confesses the motion for security for costs, this day filed herein, and gives a bond for costs, which is approved by the court.

Which bond for costs is in the words and figures following, to wit:

Bond for Costs.

I acknowledge myself bound for all costs that have accrued or may accrue in the case of Wm. C. Wilson against St. Louis & San Francisco R. R. *et al.*

Witness my hand and seal, at St. Louis, this 8th day of April, 1884.

GEO. ROGERS. [SEAL.]

Approved by the court April 8th, 1884.

CHAS. F. VOGEL, *Clerk.*

22 And afterwards, on the 8th day of May, 1884, the said defendants, James and Jesse Seligman, file their answer to plaintiff's petition in words and figures following, to wit:

Answer of Def'ts, James & Jesse Seligman.

In the Circuit Court of the City of St. Louis. April Term, 1884.

WILLIAM C. WILSON, Pl'ff,
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY CO., JAMES SELIGMAN, and JESSE SELIGMAN, Defendants.

James Seligman and Jesse Seligman, for this their answer to the petition of the plaintiff filed in the above-entitled cause, say:

1. It is true that the plaintiff is a citizen of Missouri; that the St. Louis and San Francisco Railway Company was organized under the laws of Missouri; and these defendants were and are citizens of the State of New York, as alleged by plaintiff, and deny that they are or were at dates stated the sole members of J. & W. Seligman & Co.

2. As to the truth of all the allegations contained in second subdivision of plaintiff's petition in regard to the length, operation, amount, and character of the stock of said railroad company, the

number of shares of stock, the amount of dividends to be paid to the respective shareholders, these defendants are not fully informed, but they believe the allegations in that respect are substantially correct.

3. As to whether by the requirements of its charter the said railroad corporation was and is required to maintain a public office or place of business, where transfers of its capital stock shall be made, and where shall be kept for public inspection books, in which shall be recorded the amount of the capital stock subscribed to
23 said corporation, the names of the owners of said stock, the amounts owned by them, respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of such transfer; and whether by the by-laws of said corporation duly made and then and now in full force and effect, no transfer of stock should be valid, except between the parties thereto, or allowed, except the same be made on its said stock books by the stockholder in person, or by a properly constituted attorney, whose power shall be duly executed and filed with the company; and whether, at the time of such transfer of stock, the old certificates thereof shall be surrendered and cancelled before new certificates be issued therefor, these defendants have no knowledge nor information thereof sufficient to enable them to form a belief, as they do not know what the present condition of the by-laws is in that respect. They admit, however, that the capital stock of said corporation is personal property, and that by its charter said corporation is authorized to make by-laws for the transfer of its capital stock on the books of the company, and they admit also that at the time of the commencement of this suit said corporation had and maintained a public office in the city of St. Louis for the transaction of its business, where transfers of its capital stock were and are made in books kept for that purpose.

3 (*a*). Defendants admit that on the second day of August, A. D. 1883, and for a long time prior thereto, and up to the time of the judgment, execution, levy, and sale, as in said petition thereinafter stated, there stood on the stock books of said company the shares of stock, as set out by plaintiff in his petition, in the name of J. & W. Seligman & Co., and as these defendants are informed
24 and believe no transfers of said shares of stock has been made by them in person or by any authorized attorney upon the books of said company; but these defendants deny that they were at said times or are the owners of said shares of stock so held in the firm name of J. & W. Seligman & Co., as averred.

4. As to whether judgment was duly rendered on the 2d day of April, 1883, in the circuit court of the city of St. Louis, in favor of plaintiff and against the Memphis, Carthage and Northwestern Railroad Company, for the sum of $72,799.38, with interest and costs, upon which execution was issued to the sheriffs of Jasper, Newton, and Lawrence counties, and the city of St. Louis, and duly returned unsatisfied, for the reason that no property of said defendants could be found out of which to levy the same in whole or in part, and as to whether on the 3d day of December, A. D. 1883, in a proceeding duly pending in said circuit court against these defend-

ants as stockholders of the Memphis, Carthage and Northwestern Railroad Company said court duly found that at the date of the rendition of said judgment and issue and return of said executions these defendants were stockholders of said Memphis, Carthage and Northwestern Railroad Company, owning and holding as such sixty thousand shares of the stock of said company of the par value of one hundred dollars each, and that there then remained unpaid upon said sixty thousand shares of stock the sum of five million dollars, and that there remains due and unpaid upon said judgment of plaintiff the sum of seventy-five thousand eight hundred and thirty-eight dollars, and that thereupon said court duly ordered and adjudged that the same be sustained, and that execution issue in favor of said plaintiff against these defendants for said sum of
25 seventy-five thousand eight hundred and thirty-eight dollars and costs, or that any such execution was duly issued from the office of the clerk of said circuit court, directed to the sheriff of the city of St. Louis, and returnable on the first Monday of February next thereafter, and delivered to him as averred, whereby he was commanded to levy upon the goods & chattels of these defendants to satisfy the same, these defendants have no knowledge nor information thereof sufficient to enable them to form a belief, nor whether by virtue and authority of said execution he did make the levy and sale referred to in the fourth subdivision of said petition.

These defendants admit that the sheriff of the city of St. Louis did, on the 3d day of December, A. D. 1883, under the pretended authority of a writ, purportiug to be a writ of execution issued from the office of the clerk of the circuit court for the city of St. Louis, of the date last aforesaid, make a levy and seizure of all the right, title, and interest of these defendants of, in, and to the shares of stock set forth and described in the fourth subdivision of the plaintiff's petition in this cause, which defendants are informed and believe is the same paper described and set forth in said petition, and by the pretended authority of which said paper the sheriff did make a pretended levy and seizure of all the right, title, and interest of defendants in said shares of stock, and did advertise and sell the same as stated in said petition and for the prices therein named, and that plaintiff purchased the same at said pretended sale for the prices named, but they deny that plaintiff paid to the sheriff the sums named for said purchase, except by credit upon his pretended execution.

And these defendants deny the validity of said execution and of the sale thereunder, and of the judgment upon which
26 said pretended execution purports to have been issued, and they say that said judgment upon which said execution purports to have been issued was rendered in a suit to which these defendants were not parties; that no service of process was had upon them, nor was any legal notice given to them, or either of them, of the motion and application for said judgment and execution, nor did they enter their appearance to said proceedings nor authorize any one to enter their appearance in said cause, nor did any one enter appearance for them in said cause, and they say that neither

they nor either of them, nor the firm of J. & W. Seligman & Co., were at the time of the rendition of said judgment and order of execution or at any other time stockholders of the Memphis, Carthage and Northwestern Railroad Company, nor were they or either of them, nor was the firm of J. & W. Seligman & Co., indebted to the Memphis, Carthage and Northwestern Railroad Company in the sum of five million of dollars or in any other sum at the time of the rendition of said judgment or the order of said execution, or at any other time; and these defendants say that the circuit court of the city of St. Louis had no jurisdiction over them to adjudge that they were so indebted to the Memphis, Carthage and Northwestern Railroad Company or to make an award of execution against them in said suit against said railroad company.

And these defendants deny all fraud and combination and conspiracy as alleged in said petition; they deny that they have falsely pretended that they were not the owners of said stock at the time of the levy of said pretended execution thereon. Defendants deny that by the concurrence, connivance, and collusion of the defendant corporation in this case they are exercising the rights and
27 privileges of members of the said corporation.

And for a further answer in this behalf these defendants say that long before the alleged judgment or order of execution made by the circuit court of the city of St. Louis against these defendants all the stock in question levied on and seized by the sheriff of the city of St. Louis by virtue of said pretended execution as the property of these defendants, as members of the firm of J. & W. Seligman & Co., had been sold by them for value in the usual course of business and has been paid for and delivered over to the purchasers, and that such delivery was in the usual course of business by delivering over the certificate for the stock to the purchaser, with an endorsement thereon in writing, duly signed and executed by J. & W. Seligman & Co., whereby it was expressed that the stock mentioned in or represented by the certificate was sold, assigned, and transferred, and a power of attorney was given by said J. & W. Seligman & Co. for the transfer of said stock on the books of the company, the name of the vendee or transferee and the name of the attorney being, in accordance with the usual course of business in such cases, left in blank in such endorsement, to the end and with the intent that such blank might be filled up at pleasure by the holder for the time being of such certificate, with such blank assignment and power of attorney endorsed thereon; and defendants say that by the universal customs and usages of business in Missouri and in New York and elsewhere generally in the United States and in Europe certificates of stock with such blank assignments and powers of attorney from the registered owner endorsed thereon pass from hand to hand as the full and complete representation of such stock, and such certificates with such endorsements thereon are accepted and received and treated as the
28 full documents of title, carrying with them the comple ownership of such stock, and any nominal title which may remain standing upon the books of the company in such cases stand merely

for account of and in trust for such equitable owner as aforesaid. And defendants say that whatever nominal or apparent title, if any, to the stock in the plaintiff's petition mentioned was held by or stood in the name of J. & W. Seligman & Co. at the time of the issuing of the alleged execution, or of the alleged levy and seizure by the sheriff aforesaid, or at the time of the sheriff's sale in the plaintiff's petition mentioned, or at the time of the recovery of the alleged judgment or award of execution against these defendants, or at any time subsequent thereto, was held by and stood in their names, in legal effect, in trust for and for the account and benefit of the parties, respectively, who, as holders of said stock certificates, with assignments and powers of attorney in blank thereon endorsed, previously sold by and delivered by J. & W. Seligman & Co., as aforesaid, had become and were the equitable owners of the said shares of stock mentioned in or represented by the said stock certificates. And these defendants say that neither they nor either of them had at the time of the recovery of said judgment or order for award of execution against them, or at any time subsequent thereto, any beneficial right, title, or interest in or to such stock, or any other right or title thereto, than the apparent title held by them as trustees for and for account and benefit of the parties who were the equitable owners thereof as aforesaid, as holders of said certificates with the endorsements and powers of attorney thereon.

29 And defendants, further answering, say that for each and every share of the stock claimed by plaintiff certificates of stock are outstanding, by the express terms and conditions of which, and according to the by-laws and regulations of the company, duly made and established, the company cannot be called upon to permit any transfer of the stock upon its books, or to issue any new certificates therefor, or to recognize any transfer thereof as a shareholder for the payment of dividends or for the purpose of voting as a shareholder, or otherwise howsoever, except upon surrender for cancellation of such outstanding certificates, and due transfer upon the company's books of the stock by the registered owner thereof whose name is mentioned in the certificate, or his duly authorized attorney, and defendants say that at the time of the issuing of said alleged execution against them, and of the alleged levy or seizure by the sheriff, and of the alleged sale by the sheriff, and at all times subsequent to the rendition of the said alleged judgment or order for or award or execution against them, the said James & Jesse Seligman, all the said outstanding stock certificates of stock, representing in the aggregate the whole of the shares of stock, both preferred, first preferred, and common stock, claimed by the plaintiff in his petition, were, and they now are, held and owned by divers persons or parties whose names are unknown to these defendants, and who were and are the complete equitable owners of such stock and all of said certificates at all such times, had endorsed thereon, respectively, blank assignments and tranfers of such stock, with powers of attorney for such transfer on the company's books, duly made, signed, and executed by said J. & W. Seligman & Co., as aforesaid, and that at all such times and

30 particularly at the times of said alleged levy or seizure by the sheriff, and the alleged sheriff's sale and alleged purchase by the plaintiff, both the sheriff and the plaintiff were informed of and knew that said stock so pretended to be levied on and seized, and so pretended to be sold by the sheriff, did not, nor did any part thereof, belong to the said James & Jesse Seligman, or either of them, or J. & W. Seligman & Co., and that they had not, nor had any of them, any ownership thereof or interest therein, but that long before all of said stock had been sold, transferred, and delivered by said J. & W. Seligman & Co., as aforesaid, and that the certificates thereof, with such blank assignments and powers of attorney duly executed by J. & W. Seligman & Co., as aforesaid, endorsed thereon, had been delivered over by them to the purchasers, and that such certificates and blank assignments and powers of attorney were held and owned by divers *bona fide* purchasers thereof, who were the equitable owners of all such stock, and entitled to require transfer thereof to them upon the company's books on presentation and surrender for cancellation of the said outstanding certificates, and upon the presentation of the said blank assignments and powers of attorney, and upon making proper transfers upon the company's books in pursuance of such powers of attorney.

And these defendants further say that on the 18th day of December, A. D. 1883, the day on which plaintiff claims to have purchased one hundred and twenty shares of first preferred stock of said St. Louis and San Francisco Railway Co. at fifty cents per share, the market value of said stock was ninety-five dollars per share, and that of the two thousand one hundred and seventy shares of preferred and five thousand one hundred and fifty shares of common

31 stock in said company, which plaintiff claims to have purch-ed at twenty-five cents per share, each share of said common stock was worth in the market the sum of twenty-three dollars per share, and each share of said preferred stock was worth in the market the sum of forty-five dollars per share.

And for further answer of these defendants they say that on the 19th day of December, A. D. 1883, and on the day after said pretended sale of stock, these defendants instituted a suit in the United States circuit court in and for the eastern district of Missouri against the said William C. Wilson, plaintiff in this suit, and against the St. Louis and San Francisco Railway Company, in which said suit they alleged the invalidity of said sale of stock referred to in the petition in this case, and the invalidity of the said judgment or award of execution by the circuit court of the city of St. Louis, and of the invalidity of said execution and of all proceedings thereunder, and in which they alleged that they were not at any time stockholders of the Memphis, Carthage, and Northwestern Railroad Company, nor indebted to said company as stockholders or otherwise at the time of the rendition of said judgment or award of execution, and alleging further the sale of said stock by the sheriff of the city of St. Louis and the purchase thereof by the said William C. Wilson at said sale of all of said stock; and alleging further that long before the time of said pretended sale, and before the rendition of said judgment or award of exe-

cution, they, these defendants, had sold and transferred to innocent and *bona-fide* purchasers all of said shares of stock, first preferred, preferred, and common stock, and had delivered to said purchasers the certificates of stock theretofore then held in the name of J. & W.
32 Seligman & Co., with an endorsement upon each of said certificates, conveying and transferring to said purchasers all their right, title, and interest therein, and with a power of attorney authorizing the transfer of said right, title, and interest to be made on the books of the company, the name of the purchaser and the name of the attorney being left blank according to the usage and custom of business in such cases, and that notice of all the foregoing facts were given at said sale, and alleging also that these defendants held the legal title in said stock in trust only for the use of the equitable and beneficial owners thereof, who had in good faith purchased the same from them, and praying that the said plaintiff be enjoined from prosecuting his claim to said stock, and that the said St. Louis and San Francisco Railway Company be enjoined from transferring or authorizing the transfer upon the books of the said company to the said William C. Wilson of said stock, or any portion thereof, or from permitting the said William C. Wilson to act as stockholder in said company, or from recognizing him as such stockholder. These defendants say that the same questions are involved and the same issues tendered in the said suit in the United States circuit court as are involved and tendered in this case, and that long before the commencement of this suit the said William C. Wilson and the said St. Louis and San Francisco Railway Co. were duly served with process as defendants in said suit in the United States circuit court, and the same was pending in said court at the time of the institution of this suit, and so these defendants say that *that* the said United States circuit court for the eastern district of Missouri has acquired jurisdiction of the parties to this suit, and
33 of the matters in controversy between them in said suit long before the institution of this suit; that the said United States circuit court has full jurisdiction of the said parties and of said matters of controversy, and therefore these defendants say that the said plaintiff ought not to be permitted further to prosecute his said action in this court, and they ask that an issue may be made as to whether the said suit shall be further prosecuted in this court.

And now, having fully answered, these defendants ask to be hence dismissed, with costs.

BRODHEAD & HAEUSSLER,
Att'y- for James Seligman & Jesse Seligman.

And on the same day, to wit, on the 8th day of May, 1884, the defendant, The St. Louis and San Francisco Railway Company, by its attorney, files its separate answer to plaintiff's petition in words and figures following, to wit:

Separate Answer of the St. Louis and San Francisco Railway Co.

In the Circuit Court of the City of St. Louis, State of Missuri. To the April Term, A. D. 1884.

WILLIAM C. WILSON, Plaintiff,

vs.

THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JAMES SELIGMAN, and JESSE SELIGMAN, Defendants.

The separate answer of the St. Louis and San Francisco Railway Company to the petition of the plaintiff in the above-entitled cause respectfully shows:

I. This defendant admits that it was and is a corporation duly organized and existing under the general laws of the State of Missouri under its corporate name aforesaid, and denies that James & Jesse Seligman compose the firm of J. & W. Seligman & Co.

II. It admits that it is the owner of and operate — line of railway from the city of St. Louis in a southwesterly direction
34 through the State of Missouri to the southern boundary of said State, connecting with the Atlantic & Pacific railroad, which said last-named road is in process of construction from the western boundary line of State aforesaid westward to the city of San Francisco and State of California; that its capital stock amounts in the aggregate to $25,000,000, divided into first preferred, preferred, and common stock, consisting of shares of $100 each, and of the respective amount stated in said petition.

III. This defendant admits that on the first day of January, 1883, and thereafter, up to the time of the commencement of this suit, it had and maintained a public office in the city of St. Louis, State of Missouri, for the transaction of business, where transfers of the said capital stock were and are made and books kept by said corporation for that purpose, and that by the by-laws of said corporation then and now in full force and effect, no transfer of the said stock should be made except the same be made on its stock books by the stockholder in person, or by a properly constituted attorney, whose power should be duly executed and filed, and the old certificate of stock surrendered and cancelled before new certificates be issued therefor. Defendant admits that on the 2d day of August, 1883, and for many years prior thereto, and at the time of the judgments, executions, levy and sale thereinafter mentioned, there stood on the said stock books of the said defendant as the property of J. & W Seligman & Co., of which firm defendant is informed that James Seligman and Jesse Seligman were members, 120 shares of first preferred, 2,170 shares of preferred, and 5,150 shares of common stock of this corporation, each share of stock being of
35 the par value of one hundred dollars, and that no transfers of said shares of stock on the said stock books of the said corporation at or since said date last aforesaid had or has been made by the said James and Jesse Seligman, or either of them, in person or by any authorized attorney, or by the said firm of J. & W. Seligman & Co., but this defendant avers that long before the levy and

sale referred to in plaintiff's petition, and before the issuing of the execution under which said sale was made, this company received information that J. & W. Seligman & Co. had sold to various parties all of said stock standing in their name on books of the company, and have transferred the certificates of said stock and executed powers of attorney authorizing the transfer of said stock on the books of this company, which said sale and transfer embraces the interest of Jesse and James Seligman in such stock, of all of which facts the said plaintiff as well as the sheriff of the city of St. Louis were duly notified at the time of the levy and seizure of said stock under the execution referred to in said petition.

IV. As to the allegation contained in the fourth subdivision of plaintiff's petition herein relating to the judgment of the circuit court of the city of St. Louis, in favor of plaintiff against the Memphis, Carthage and Northwestern R. R. Co., and the issue of the execution thereon and against said and last-named company, and as to whether said executions were returned unsatisfied as averred, and as to whether thereafter execution was awarded and issued against James and Jesse Seligman as stockholders of said last-named company, and as to whether by the judgment of said court the said

36 Jesse and James Seligman were held to be stockholders of said company to the amount of 60,000 shares of stock thereof, and as to whether there remained unpaid upon said shares of stock the sum of $5,000,000, and as to all the other facts and averments set out by the plaintiff in the fourth subdivision of his petition, this defendant has no knowledge or information thereof sufficient to enable it form a belief. It is true that on the 19th day of December, A. D. 1883, plaintiff exhibited to this defendant at its chief office and place of business a certificate of purchase of the interest of James and Jesse Seligman in said shares of its capital stock purporting to have been made at the execution sale referred to in said petition, and standing in the name of the said J. & W. Seligman & Co on the books of the said company, and demanded of this defendant that it cause the name of the plaintiff in this suit to be entered on the stock books of the corporation as the owner of said shares of capital stock, and also requested this defendant to pay to plaintiff all dividends that might thereafter be declared and become payable on said stock.

VI. This defendant admits that upon said request and demand being made it did refuse and still refuses to enter upon the stock books of the said corporation the name of the said plaintiff as the owner of said shares of its capital stock, or any part thereof, or to issue to him certificates of said stock. But this defendant denies that it has combined or conspired with the said Jesse and James Seligman to defraud the said plaintiff in the premises, or to render the said judgment, award of execution, levy and sale of said stock unavailing to him, or to prevent him from receiving the benefits of his purchase thereof. Defendant denies that on the 18th day of December, 1883, it caused to be publicly read a written notice

37 to the effect that although said stock at the time of said sale stood on the books of the defendant in the name of J. & W.

Seligman & Co. the truth was that the said stock and certificates thereof were sold and transferred by J. & W. Seligman & Co. to other parties long before the issuing of the said execution or levy thereof, and that neither the said Jesse or James Seligman, or the said firm of J. & W. Seligman & Co., at the time of the issuing of said execution, or the levy thereof, or at the time of said sale owned, nor had they, or either of them, any interest in said stock so levied upon, which facts so stated in said notice this defendant says were true at the time said notice was given. This defendant denies that out of the surplus earnings of this corporation for the year ending February 1, 1884, there is entitled to be paid on the shares of first preferred stock and preferred stock an annual dividend on the first day of February, 1884.

For further answer, this defendant says: That for each and every share of stock claimed by the plaintiff in this cause certificates of stock are outstanding, and as this defendant is informed and believes the said certificates of stock are held by parties to whom the said J. & W. Seligman & Co. had sold and transferred their interest in said stock, of which the plaintiff in this case was, as also was this defendant, fully notified before the issue of the execution referred to and the levy and sale made thereunder, and that by the express terms and conditions of said certificates of stock and according to the by-laws and regulations of the St. Louis & San Francisco Railroad Co., duly made and established, this company cannot be called upon to permit any transfer of the stock upon its books or to
38 issue any new certificates therefor, or to recognize any transfer thereof to any one as a shareholder for the payment of dividends, or for the purpose of voting as a shareholder, or acting otherwise as a shareholder, except upon surrender for cancellation of such outstanding certificates, and due transfer of the stock upon the said company's books by the registered owner of the stock whose name is mentioned in this certificate, or his duly authorized attorney.

And that at the time of the issuing of the said alleged execution against James and Jesse Seligman and of the levy or seizure by the sheriff, and at the time of the sale by the sheriff and at all times subsequent to the rendition of the said alleged judgment or order for or award of execution against James and Jesse Seligman, all the said outstanding stock certificates, representing in the aggregate the whole of the shares of stock, both preferred and common and first preferred, claimed by plaintiff in his petition, were, and they now are, held and owned by divers persons and parties whose names are unknown to this defendant, but who are the full and complete equitable owners of said stock. And defendant further says that all such certificates at all such times had endorsed thereon, respectively, blank assignments and transfers of said stock, with powers of attorney for such transfer, on the company's books, duly signed and executed by the said J. & W. Seligman & Co., of all of which both the sheriff and the plaintiff were informed and knew at the time of the seizure and sale of said stock. That the holders of said certificates are entitled to require transfer of said stock to them upon the company's

books on presentation and surrender for cancellation of the
39 said outstanding certificates and upon presentation of the said blank assignments and powers of attorney and making proper transfers on the company's books in pursuance of such powers of attorney. This defendant further says that neither the plaintiff nor any one for him has at any time surrendered or offered to surrender the said outstanding stock certificates, or any of them, or to present any authority from the registered owner for the transfer of said shares of stock, and this defendant is not authorized by the law or by the by-laws and regulations of the St. Louis & San Francisco Railroad Co. to make, or cause to be made, any transfer of said shares of stock, or any of them, to the plaintiff in this case. This defendant, further answering, says that on the 18th day of December, A. D. 1883, the day on which plaintiff claims to have purchased 120 shares of first preferred stock of the said St. Louis and San Francisco R. R. Co., at fifty cents per share, the market value of said stock was ninety-five dollars per share, and that of the 2,170 shares of preferred and 5,150 shares of common stock in said company, which plaintiff claims to have purchased at twenty-five cents per share, each share of said common stock was worth in the market the sum of twenty-three dollars per share, and each share of said preferred stock was worth in the market the sum of forty-five dollars per share.

And for further answer this defendant says that on the 19th day of December, A. D. 1883, the day after said pretended sale of stock referred to in plaintiff's petition, James Seligman and Jesse Seligman instituted a suit in the United States circuit court in and for the eastern district of Missouri against the said William C. Wilson, plaintiff in this suit, and against
40 this defendant, The St. Louis and San Francisco R. R. Co., in which said suit they alleged the invalidity of the said sale of stock referred to in this petition, and the invalidity of the said judgment or award of execution by the circuit court of the city of St. Louis, and the invalidity of said execution and of all proceedings thereunder, and in which they further allege that they were not at any time stockholders of the Memphis, Carthage and Northwestern R. R. Co., nor indebted to said company as stockholders or otherwise at the time of the rendition of the said judgment or award of execution in the sum of $5,000,000, nor in any other sum; and further alleging in the bill of complaint filed therein by them, the sale of the said stock by the sheriff of the city of St Louis and, the purchase thereof by the said William C. Wilson at said sale of all of said stock, and further alleging that long before the time of said pretended sale and before the rendition of the said judgment or award of execution, they had sold and transferred to innocent and *bona fide* purchasers all of said shares of stock embracing the first preferred, preferred, and common stock, and had delivered to the said purchasers the certificates of stock theretofore held in the name of J. & W. Seligman & Co., with an endorsement upon each of said certificates conveying and transferring to the said purchasers all their right, title, and interest therein,

and with the power of attorney authorizing the transfer of said right, title, and interest to be made on the books of the company, the name of the purchaser and the name of the attorney being left blank according to the usage and custom of business in such cases, and that notice of all the foregoing facts were given to the purchaser at said sale; and further alleging in their said bill
41 that they, the said Jesse and James Seligman, had a legal title in and to said stock in trust only for the use of the equitable and beneficial owners thereof who had in good faith purchased the same from them. And that in their said bill of complaint they prayed that the said plaintiff, William C. Wilson, be enjoined from prosecuting his claim to said stock, and that the said St. Louis and San Francisco R. R. Co. be enjoined from transferring or authorizing the transfer upon the books of the said company to the said William C. Wilson of said stock or any portion thereof, or from permitting the said William C. Wilson to act as stockholder in said company, or from recognizing him as such stockholder.

This defendant says that the same questions are involved and the same issues tendered in the said suit in the United States circuit court as are involved and tendered in this case, and that long before the commencement of this suit the said William C. Wilson and this defendant were duly served with process as defendants in said suit in the United States circuit court. And the same was pending in said court at the time of the institution of this suit, and is still pending and undisposed of.

And so this defendant says that the said United States circuit court for the eastern district of Missouri had acquired jurisdiction of the parties to this suit and of the matters in controversy between them in said suit long before the institution of the same; that the said United States circuit court has full jurisdiction of the said party and of the said matters in controversy, and that this defendant ought not be twice vexed or harrassed by different suits in regard to the subject-matter in controversy.

42 That the suit first instituted has all the proper parties to said controversy and is amply sufficient for a complete determination of said controversy, and therefore this defendant says that the said plaintiff ought not to be permitted further to prosecute his said action in this court, and this defendant asks that an issue may be formed as to whether the said suit shall be further prosecuted in this court.

And this defendant, having now fully answered, asks to be hence dismissed with costs.

JOHN O'DAY,
Att'y for St. Louis & San Francisco Railway Company.

And afterwards, on the 13th day of May, 1884, the plaintiff, by attorney, files his reply to the separate answer of James and Jesse Seligman, in words and figures following, to wit:

Reply to Separate Answer of J. & J. Seligman.

In the Circuit Court of the City of St. Louis, State of Missouri.
April Term, A. D. 1884.

WILLIAM C. WILSON, Plaintiff,
against
THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, JAMES SELIGMAN, and JESSE SELIGMAN, Defendants. } No. 64034.

Plaintiff, for reply to the separate answer of defendants, James and Jesse Seligman, herein denies generally each and every allegation of new matter of fact therein contained.

BOTSFORD & WILLIAMS,
Attorneys for Plaintiff.

And the same day, to wit, the 13th day of May, 1884, the plaintiff, by attorney, files his separate reply to defendants, The St.
43 Louis and San Francisco Railway Company's, separate answer, in words and figures following, to wit:

Reply to Separate Answer of the St. Louis & San Francisco Railway Co.

In the Circuit Court of the City of St. Louis, State of Missouri.
April Term, A. D. 1884.

WILLIAM C. WILSON, Plaintiff,
against
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JAMES SELIGMAN, and JESSE SELIGMAN, Defendants. } No. 64034.

Plaintiff, for reply to the separate answer of defendant, The St. Louis and San Francisco Railway Company, denies generally each and every allegation of new matter of facts therein contained.

BOTSFORD & WILLIAMS,
Attorneys for Plaintiff.

And afterwards, at a special term of said circuit court, being the April term, 1884, thereof, the following further proceeding was had in said cause, to wit:

Order of Removal.

WEDNESDAY, *May 28th*, 1884.

WILLIAM C. WILSON
vs.
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JAMES SELIGMAN, and JESSE SELIGMAN. } 64034.

On petition of the defendants, James Seligman and Jesse Seligman, by attorney, this day filed, it is ordered by the court that upon defendants giving bond in the sum of five hundred dollars, to be approved by the court, that the clerk of this court do forthwith certify to the circuit court of the United States for the eastern district of

Missouri a full, true, and complete transcript of the record and proceedings in this cause, as fully as the same appear of record in this office. Bond approved and filed.

44 Which petition and bond for removal are respectively in words and figures following, to wit:

Petition for Removal.

STATE OF MISSOURI, } *ss:*
City of St Louis, }

In the St. Louis Circuit Court. April Term, 1884.

WILLIAM C. WILSON, Plaintiff,
vs.
THE ST. LOUIS & SAN FRANCISCO RAILWAY CO., and JESSE SELIGMAN, and JAMES SELIGMAN, Defendants. } No. 64034. (2.)

Now comes the above-named Jesse and James Seligman, defendants in the above-entitled cause, and state that the matter in dispute in said cause exceeds, exclusive of costs, the sum or value of five hundred dollars ($500); that said plaintiff is a citizen of the State of Missouri, and that these petitioners, Jesse and James Seligman, are citizens of the State of New York; that there is in said suit a controversy wholly between citizens of different States, which can be fully determined as between them without the presence of the defendant, The St. Louis and San Francisco railroad.

That there is in said suit a separate controversy wholly between said plaintiff and your petitioners, citizens of different States as aforesaid, which can be fully determined as between them, and your petitioners are actually interested in said controversy.

That the controversy in said suit between plaintiff and your petitioners as made by the pleadings is wholly distinct and separate from that between plaintiff and the St. Louis & San Francisco Railway Company.

Wherefore said defendants pray the court for an order removing said cause to the United States circuit court for the eastern district of Missouri, and said defendants herewith tender a bond, as required by sec. 3, chap. 137, act of March 3d, 1875.

45

BROADHEAD & HAEUSSLER,
Att'ys for Jesse & James Seligman.

Bond for Removal.

WILLIAM C. WILSON, Plaintiff,
vs.
ST. LOUIS AND SAN FRANCISCO RAILWAY *et al.*, Defendants. } No. 64034. (2.)

Know all men by these presents that we, Chas. S. Broadhead as principal and H. A. Haeussler as security, are held and firmly bound unto William C. Wilson in the sum of five hundred dollars ($500), for the payment of which, well and truly to be made, we bind our-

selves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis, this 27th day of May, A. D. 1884.

The condition of the above obligation is such, that whereas Jesse Seligman and James Seligman have petitioned the circuit court for the city of St. Louis for the removal of cause No. 64034 in said court, wherein William C. Wilson is plaintiff and the St. Louis and San Francisco Railway Co. and said Jesse and James Seligman are defendants, to the United States circuit court for the eastern district of Missouri:

Now, therefore, if said Jesse Seligman and James Seligman shall enter in said United States circuit court, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by said United States circuit court if said court shall hold that said suit was wrongfully or improperly removed
46 thereto, then this obligation to be void; otherwise to remain in full force and effect.

CHAS. A. BROADHEAD. [SEAL.]
HERMAN S. HAEUSSLER. [SEAL.]

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, do hereby certify that the above and foregoing is a true, full, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this tenth day of September, A. D. 1884.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

And afterwards, to wit, on the 16th day of September, A. D. 1884, there was filed in said cause the following motion to remand, in words and figures following, to wit:

Motion to Remand.

In the U. S. Circuit Court for the Eastern District of Missouri.
September Term, 1884.

WILLIAM C. WILSON, Plaintiff,
against
THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY and JESSE SELIGMAN and JAMES SELIGMAN, Defendants.

And now, at this day, comes said plaintiff, and moves the court to remand the above cause to the St. Louis circuit court,
47 from which it was removed to this court by said defendants, Jesse and James Seligman, and in support of this motion plaintiff assigns the following grounds:

I. This suit, being a suit between plaintiff, a citizen of the State of Missouri, and said railway company, a corporation of the same

State, and the defendant with said Seligmans, is not removable to this court under any law of the United States.

II. This suit does not involve a controversy between citizens of different States within the meaning and intent of the Constitution or laws of the United States.

III. This cause is not removable to this court on the case stated in the petition for a removal or on the pleadings, or on said petition and pleadings considered together.

IV. This court has no jurisdiction under any removal law of the United States.

V. The laws of the United States relating to the removal of causes from the State courts were not complied with in the removal of this cause.

Wherefore plaintiff prays that the court will order this cause to be remanded to said St. Louis circuit court.

BOTSFORD & WILLIAMS,
For the Plaintiff.

And afterwards, to wit, on the 24th day of September, A. D. 1884, the following proceedings were had in said cause, and appear of record in said court, to wit:

WILLIAM C. WILSON
vs.
ST. LOUIS & SAN FRANCISCO RAILWAY CO. *et al.* } 2415.

The motion of plaintiff to remand this cause to the St.
48 Louis circuit court came on to be heard, and was argued and submitted and taken under advisement.

And afterwards, on the 25th day of September, A. D. 1884, the following further proceedings were had in said cause, and appear of record in words and figures following, to wit:

WILLIAM C. WILSON
vs.
ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY *et al.* } 2415.

The motion of plaintiff to remand this cause to the St. Louis circuit court having been heretofore argued and submitted, and the court having fully heard and considered the same, it is ordered that said motion be sustained and said cause remanded.

And afterwards, to wit, on the 29th day of September, A. D. 1884, the following further proceedings were had in said cause, and appear of record in words and figures following, to wit:

WILLIAM C. WILSON
vs.
ST. LOUIS AND SAN FRANCISCO RAILWAY CO. *et al.* } 2415.

Now come defendants, by their attorney, and present to the court their writ of error to remove this cause to the Supreme Court of the United States, and a citation citing the plaintiff to be and appear

at said court at the next term thereof, which writ of error is allowed and said citation signed.

49 And on said 29th day of September, A. D. 1884, the following further proceedings were had and appear of record in said cause, to wit:

WILLIAM C. WILSON
vs.
ST. LOUIS AND SAN FRANCISCO RAILWAY CO. *et al.* } 2415.

Now come the said defendants, by James O. Broadhead, Esquire, their solicitor, and pray an appeal from the decree of this court, on plaintiff's motion to remand to the Supreme Court of the United States, which is allowed on defendants filing a good and sufficient bond in the sum of five hundred dollars.

50 WILSON
vs.
THE ST. LOUIS & SAN FRANCISCO R'Y CO. } No. 2415. Motion to remand.

Opinion by Mr. Justice MILLER.

The case of Wilson *vs.* The St. Louis & San Francisco R'y Co. and the Seligmans, submitted to us yesterday on a motion to remand, was brought to the State courts and removed here. The question is presented in this manner: Wilson, who had recovered a judgment against the Memphis, Carthage & Northwestern R. R. Co., had an execution returned "no property found," and then took proceedings under the law of Missouri concerning such cases to subject the stockholders to personal liability, and in those proceedings he obtained an order against the Seligmans, with an execution issued against them for some seventy odd thousand dollars. Under that execution the sheriff levied upon and sold certain stock standing in their names on the books of the St. Louis and San Francisco R. R. Co. and gave the usual certificate of sale. Mr. Wilson, finding that certificate unavailable because the St. Louis & San Francisco Railroad Co. would not recognize his right in the premises, filed this petition in the State court in the nature of a bill in chancery to compel the railroad Co. to acknowledge his interest in the stock, to have it registered on their books in his name and to permit him to receive dividends, vote, and otherwise exercise the functions of a stockholder in that Co. He also made the Seligmans parties on the ground that the stock stood in their name on the books of the company,
51 and averring that he had acquired their interest, and in that state of case the Seligmans filing their answer (in which they stated that they did not own the stock at the time the judgment was rendered against them, nor at the time of the sale to Wilson, but had parted with it, and that the certificates were then and ever since had been in the hands of persons to whom they sold, whose names they do not give) say it was sold in the ordinary business way by endorsement with blank power of attorney, and that they do not now know where it is; at all events, they assert very roundly that they have no interest in the stock itself—no equitable interest—

although it stood in their names on the books at the time of filing the answer of the railroad Co.

Application was made by Seligman, as a citizen of New York, on the ground of his citizenship of New York, to transfer the case to this court, and it was done by order of the State court. It is now moved to remand it on the ground that it was not a removable cause, and the question that is presented is rather a question of fact than any needed new construction of the law on the subject of removal, for the courts have decided, and it has been decided frequently, so that the doctrine must be pretty well established at this time, that if a non-resident party has an interest in a controversy which is separate and distinct and does not necessarily involve the interest of the other defendants in the issue, or the other party on the same side, he can remove the whole case into the Federal courts. On the other hand, if the interests of the parties are so identified and so mixed up that they must and should be decided together, and depend under the final decree and must depend upon and involve the
52 rights of both parties, then it cannot be removed, where one of the parties is a citizen of the same State with the pl'ff or defendant.

I think such is the case here. The main relief sought which would satisfy Wilson is, that he be placed on the books of the St. Louis and San Francisco Railroad Company, as the owner of that stock. To do that that company has something to do. They resist him. The powers of this court are called into operation to compel them to do that thing. Whether they should do it or not depends upon the fact whether Wilson is the rightful owner of that stock, and that depends upon whether the sale of the stock was properly made, and whether he (Wilson) acquired the right to the stock which stood in the name of the Seligmans on the books of the railroad Co., as the owners of the stock ought to be bound by any decree which makes the transfer out of their name into Wilson's name.

If they are not bound by it, the act is of very little value to Wilson. If they can go on and show they owned the stock, or that some vendee of theirs owned the stock, why Wilson gets no good of that. He has the right, therefore, that the question in whose name the stock stands on the books of the company shall be before the court & that the decree shall bind him at the same time that it binds the railroad Co. The act to be done, the interest sought to be enforced against both these parties, affects both, and both should be bound by it, and, therefore, it is a case not transferable to the circuit court of the United States because the railroad Co. is a citizen of the same State with Wilson the plaintiff.

The case will be remanded.

I wish to suggest, however, as I have done several times of
53 late on the circuit, that these cases of removal, when remanded, if the court commits an error, it is speedily remediable in the Supreme Court of the United States. Take this particular case in which the order to remand is made. The other party can take a writ of error to-morrow, have the record filed in the Supreme Court of the United States on the first day of the term, go there and make

his motion to have the case advanced and heard, prepare his brief. submit it to the court, and it can be decided within ten days from the second Monday in October. The court has found this trouble in these cases, that where a case is not remanded, the court goes on and exercises jurisdiction, and it comes upon a writ of error afterwards, but in cases where it is remanded the Federal court suspend and do nothing at all. Our court has felt the necessity of bringing that class of cases within the rule of advancement so that they are advanced and heard out of their order always, when the party against whom the judgment is rendered takes the necessary steps to have it reversed. So, it is with less hesitation that we order the remanding of this case, from the fact that by the first day of November Mr. Seligman can have the question decided by the Supreme Court of the United States whether we shall change the order or not.

On the 14th day of October, 1884, at said term of court, there was approved and filed the following bond in said case, to wit:

54 Know all men by these presents that we, John O'Day, as principal, and James O. Broadhead and C. S. Broadhead, as securities, are held and firmly bound unto William C. Wilson in the full and just sum of five hundred dollars, to be paid to the said William C. Wilson, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at the September term for the year 1884 of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between the said William C. Wilson, as plaintiff, and The St. Louis and San Francisco Railway Company, and Jesse Seligman, and James Seligman, as defendant-, judgment was rendered against the said defendants, and the said defendants having obtained a writ of error and appeal of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William C. Wilson, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October, 1884:

Now the condition of the above obligation is such that if the said defendants shall prosecute said writ of error and appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

JOHN O'DAY. [SEAL.]
CHAS. S. BROADHEAD. [SEAL.]
JAMES O. BROADHEAD. [SEAL.]

Sealed and delivered in presence of—

_____ _____.

Approved by—
SAMUEL TREAT.

54½ [Endorsed:] No. 2415. United States circuit court, eastern district of Missouri. Wm. C. Wilson *vs.* St. Louis & San Francisco R. R. Co. *et al.* Bond. $500.00. John O'Day, principal; Chas. Broadhead, James O. Broadhead, sureties. Filed 14th day of Oct., 1884. A. R. Selby, clerk.

55 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 2415 of William C. Wilson, plaintiff, against The St. Louis and San Francisco Railway Company and James Seligman and Jesse Seligman, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office in the city of St. Louis, in said district, this 14th day of October, in the year of our Lord eighteen hundred and eighty-four.

[SEAL] A. P. SELBY,
Clerk of said Court.

[Endorsed:] No. 2415. United States circuit court, eastern district of Missouri. William C. Wilson against St. Louis and San Francisco Railway Company & others. Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 1194. The St. Louis & San Francisco Railway Company, Jesse Seligman, and James Seligman, plaintiffs in error and appellants, *vs.* William C. Wilson. Filed November 4, 1884.

54½ [Endorsed:] No. 2115. United States circuit court, eastern district of Missouri. Wm. C. Wilson *vs.* St. Louis & San Francisco R. R. Co. *et al.* Bond. $500.00. John O'Day, principal; Chas. Broadhead, James O. Broadhead, sureties. Filed 11th day of Oct., 1884. A. P. Selby, clerk.

55 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } ss.

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 2115 of William C. Wilson, plaintiff, against The St. Louis and San Francisco Railway Company and James Seligman and Jesse Seligman, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office in the city of St. Louis, in said district, this 11th day of October, in the year of our Lord eighteen hundred and eighty-four.

[SEAL.]

A. P. SELBY,
Clerk of said Court.

[Endorsed:] No. 2115.—United States circuit court, eastern district of Missouri. William C. Wilson against St. Louis and San Francisco Railway Company & others. Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 1194. The St. Louis & San Francisco Railway Company, Jesse Seligman, and James Seligman, plaintiffs in error and appellants, *vs.* William C. Wilson. Filed November 4, 1884.

114-60

Supreme Court U. S.
FILED.
FEB 24 1885
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JESSE SELIGMAN AND JAMES SELIGMAN—*Plaintiffs in Error and Appellants,*

vs.

WILLIAM C. WILSON.

In Error and Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

JAMES O. BROADHEAD,
Attorney for Seligmans.

R. O. Polkinborn & Son, Printers, Washington, D. C.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE ST. LOUIS AND SAN FRANCISCO RAILWAY COMPANY, JESSE SELIGMAN AND JAMES SELIGMAN—*Plaintiffs in Error and Appellants,*

vs.

WILLIAM C. WILSON.

In Error and Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT.

This suit was brought by William C. Wilson, respondent, against the St. Louis and San Francisco Railway Company and Jesse and James Seligman, in the Circuit Court of St. Louis, Missouri.

The respondent, plaintiff below, is a citizen of Missouri; the Railway Company is a citizen of Missouri, and the other two defendants, James Seligman and Jesse Seligman, are citizens of the State of New York.

The plaintiff claims in his petition that he obtained a judgment in the State Court against Jesse Seligman and James Seligman, members of the firm of J. & W. Seligman

& Co, that by an execution issued upon that judgment, he caused a large number of shares of the St. Louis and San Francisco Railway Company to be levied on as the property of J. & W. Seligman & Co.; that they were advertised and sold under execution by the sheriff of the City of St. Louis, and that he became the purchaser; that thereafter, he exhibited his certificate of purchase to the railroad corporation, at its chief office and place of business, and demanded in writing of the corporation, "that it cause the name of the plaintiff to be entered on the stock books of the corporation as the owner of the shares of stock purchased at sheriff's sale, and notified the corporation to pay to plaintiff all the dividends that might thereafter be declared on said stock," and that the corporation refused to enter upon the stock books of the corporation the name of the plaintiff as owner of said shares of capital stock, or to issue to him certificates of stock.

Plaintiff avers that the Seligmans were the owners of the stock at the time of the sale under execution, and that their interest in the stock was sold out under the authority of said execution, and plaintiff became owner thereof, although they pretend that they held the equitable interest in said stock in trust for other parties.

And the prayer of the bill is, that the railroad corporation be compelled to place plaintiff's name on the transfer books of the corporation, as the owner of said shares of stock, and to issue to him certificates for all of said shares of stock; that plaintiff be allowed to exercise all the rights and privileges of a stock holder, and that the corporation be enjoined from permitting the other defendants, the Seligmans, any rights and privileges as stock-holders, and that all the right, title and interest, which the said Jesse and James Seligman had in and to said shares of stock, be decreed to be in the plaintiff, and that the Seligmans be enjoined from exercising the rights of stock-holders of said corporations as holders of said shares of stock.

The Seligmans, in their answer, deny the validity of the judgment, execution and sale. They say that the judgment was rendered in a suit to which they were not parties, and they further say that at the time of the pretended judgment, as also at the time of the levy upon the stock, and at the time of the issuing of the execution, and at the time of the sale, they had no interest in the stock; that it is true it stood upon the books of the company in the name of J. & W. Seligman & Co., but that they had long before that time sold said stock on the market to other parties whose names are unknown to them, and had transferred the certificates of stock by endorsement thereon in writing; that the equitable and real ownership of the stock is in other parties, and that they hold the legal title to said stock in trust for the purchasers and owners thereof; that by the customs and usages of business generally in the United States, certificates of stock with blank assignments from the registered owner endorsed thereon, pass from hand to hand as the full and complete representation of said stock, and such certificates, with such endorsements thereon, are accepted and received and treated as the full documents of title, carrying with them the equitable ownership of such stock, and any nominal title which may remain standing on the books of the company in such cases stand merely for the account of and in trust for such equitable owner.

So that the real question in this case is as to the ownership of the stock between the plaintiff and the Seligmans, and the validity of the judgment under which the sale was made.

The case was removed from the State Court to the United States by the Seligmans. A motion was made by the plaintiff for an order remanding the cause to the State Court; the order was made, and from that order an appeal was taken, and a writ of error was sued out by the Selig

mans, and the case brought to this Court upon the question of jurisdiction.

Argument.

I.

The second section of the Act of March 3d, 1874, has two main clauses or sub-divisions—and so far as the question arising in this case is concerned—that is, so far as the question of citizenship is concerned, *the first clause* refers to a case where there is but one controversy in the suit, and in that case all the real parties to the controversy must be citizens of different States.

The second clause relates to a suit where there is more than one controversy, and where it appears that there is "*a controversy*, which is wholly between citizens of different States, and which can be determined as *between them*;" either one of the plaintiffs or defendants *actually* interested in the controversy, may remove the suit to the United States Circuit Court—such removal will take the whole suit—and in this respect the Act of 1875 differs from the Act of 1866, which had the effect of removing the *controversy* and not the whole suit.

In either case, however, whether under the first clause or the second clause, the right of removal must be determined by reference to the real parties in interest to the controversy, no matter how they may be arranged on the record or the pleadings as plaintiffs or defendants.

That is the doctrine held by this Court in the Removal Causes, 100 U. States, p. 457; also in the case of *Pacific Railroad* vs. *Ketchum*, 101 U. S., p. 298, in which last named case the Court says:

> "The courts of the United States might take jurisdiction without regard to the position the parties occu-

> pied in the pleadings as plaintiffs or defendants. For the purposes of jurisdiction, the court had power to ascertain the *real matter* in dispute, and arrange the parties on one side or the other of that dispute."

And in all subsequent cases, which have come before this Court, this doctrine has been maintained and declared to be the true interpretation of the 2d section of the act of March, 1875, viz: That if there is but one real controversy, and the parties to that controversy, when properly arranged, are citizens of different States, the suit may be removed. And where there is more than one controversy, and they are separable, as appears from an examination of the record, as it stood when the cause was removed, and the parties to any one separate controversy are citizens of different States, then either party to such separable controversy may remove the suit to the Federal Court.

In the case of *Barney* vs. *Latham*, 103 U. S., p. 205, there was a separable controversy, and the removal was justified.

In *Blake* vs. *McKim*, 103 U. S., there was no separable controversy, and the right of removal was denied—and so in all the subsequent cases upon this point, the same doctrine has been maintained.

The law is well settled by the decisions of this Court. The only question to be considered is whether the facts will authorize the removal under the rules laid down by this Court.

When this case now before the Court comes to be analyzed, it will be found that there is but one controversy, and that controversy is between Wilson, who is a citizen of Missouri, and the Seligmans who are citizens of New York.

The railroad company is a mere nominal party; it has no real interest in the controversy; it can have no interest in the controversy. Whether the stock belongs to Wilson or to the parties represented by the Seligmans cannot in any way

affect the interest of the company. That company is bound to recognize the rightful owner whoever he may be.

So far as the railroad company is concerned, it stands in precisely the same attitude as if it had brought a bill of interpleader with the view of having the Court determine whether the one party or the other is entitled to the stock, because the question of the ownership of the stock is the only real controversy.

The 4th point made by the respondent Wilson is that the cause is not removable under the first clause of the second section of the act of March, 1875. We say it is; and if the Court can see from the case as made by the pleadings that the jurisdiction of the United States Circuit Court attaches, it will so hold, no matter what the petition for removal may state.

In the case of *Harter* vs. *Kernochan*, 103 U. S., p. 562, the facts were these:

A bill was filed by certain tax payers of Clay County, Illinois, and the township of Harter against the state treasurer and auditor, the county clerk and treasurer, the township collector, supervisor and clerk and two justices, and two justices of the township, and also against the unknown owners and holders of certain bonds and coupons, who were alleged to be citizens of States other than Illinois, charging that the bonds were issued without authority of law, and not binding on the township, and praying the court to so decree, and for a perpetual injunction to prevent the State, county and township officers from taking any steps for the assessment and collection of taxes to pay the bonds

Kernochan, a citizen of Massachusetts, applied to be made a party to the suit as a holder of some of the bonds, and filed a petition for removal of the cause to the United States Circuit Court.

The original suit was between citizens of the same State. The officers were made defendants. Kernochan, the citizen

of Massachusetts, was made a defendant with them; he applied for removal.

The supreme court, in passing on the question of jurisdiction, says:

> "It is apparent that the sole matter in dispute is the liability of the township upon the bonds; that upon one side of that dispute are all the State courts and township officers and tax payers who are made parties, while upon the other is Kernochan, the owner of the bonds, whose validity is questioned by this suit; he alone is, in a legal sense, interested, &c.

What is the difference in principle between that case and the case before the Court? The officers of the county had no interest personal to themselves, as in this case the railroad company has no interest; in each case there were certain things to be done—affecting the interest of the owners of the bonds in one case, and of the stock in the other; yet the officers are not to be treated as real parties to the controversy—which was the validity of the bonds—nor in this case is the railroad company to be treated as a real party to the controversy—which is the ownership of the stock; upon that controversy the Seligmans are ranged on one side, and Willson on the other; they are citizens of different States and the cause is one of Federal jurisdiction.

The attorney for defendant in his brief, at p. 11, says:

> "It is the doctrine of this Court that the members of a corporation are conclusively presumed to be citizens of the State which created the corporation of which they are members."

We are not aware of any such doctrine. To *conclusively* presume that all the stockholders of a corporation are citizens of the State which created the corporation, would be to hold that no citizen of another State could become a stockholder of any such corporation at any time or under

any circumstances. This is simply absurd. This Court has held that a corporation created by a particular State is a citizen of that State because the presumption is that a majority of the stockholders forming the corporation were citizens of the State that created it.

From this false opinion the counsel goes on to argue as follows:

> "If, therefore, the court below could take jurisdiction of the St. Louis and San Francisco Railway Company, it is on the ground that the members of that corporation, including the Seligmans, are conclusively presumed to be citizens of the State of Missouri. In this case (he says) the Seligmans are before the court in their character as stockholders of the St. Louis and San Francisco Railway Co."

And, therefore, he *argues*, they *are citizens of Missouri!* And being citizens of Missouri, they are citizens of the same State with his client, and the jurisdiction of the Federal courts cannot attach.

II.

The Seligmans have been made parties, and they could not by any judgment of the Court have been divested of any ownership of the stock which they held, whether in their own right or as trustees for others, without making them parties to the suit. A judgment against the corporations in a suit to which they were not made parties, could not have affected them or their rights in any respects whatever. This is a proposition so plain that it does not need argument.

In their answer, the Seligmans claim that, although the stock stands in their name, they are not the equitable owners.

The first question then, to be considered is, what attitude does the vendor of stock hold in regard to the vendee of

stock? The decision of the Supreme Court of the United States, in 3 Howard, lays down this rule, which has been followed not only by that Court, but by the Supreme Court of the State of Missouri, that the transfer of a certificate of stock only passes the equitable ownership of the stock. It does not pass the legal title to the stock. That is settled by the decision of the Supreme Court of Missouri in the case of the *Boatmen's Insurance and Trust Company* vs. *Able*, in 42 Mo.; and Judge Dillon says the same thing in rendering the opinion of this Court in the case of *Johnson* vs. *Laflin*, that it passes only the equitable title to the stock. So that when a certificate of stock is transferred, and, as is usually the case in those transfers, a power of attorney is given to the vendee or to some one for him, until that transfer has been made upon the books of the company, the holder of that certificate is only the equitable owner of that stock.

I will refer to what the courts have said upon that subject. In the case of *Black* vs. *Zachari*, 3 Howard, 483, Judge Story says:

"The regulation that no transfer shall be valid until made on the books of the company is manifestly a regulation designed for the security of the company itself, and of third persons taking transfers of stock without notice of any prior equitable transfer. It relates to the transfer of the legal title and not of any equitable interest in the stock subordinate to that stock, subordinate to that title," referring to the case of *Union Bank of Georgia* vs. *Laird*, 2 Wheaton, 390.

As between the vendor a transfer not in conformity to such provision is good to pass the equitable title and divest the vendor of all interest in the stock; and in this case it was further held that a transfer of stock, valid by the law of the State where the transfer is made, is valid anywhere, and that an attaching creditor who has notice of such transfer is bound by it, that the title was complete in the assignee so as to bind the corporation and the attaching creditor after

due notice to them. The Supreme Court of Missouri, in the *Boatmen's Insurance & Trust Company* vs. *Able*, 48 Mo., 139, says:

> "It is a recognized rule in the sale of stock that an assignment or transfer of a stock certificate will not of itself pass the title to the stock, although, like an agreement in writing to sell land, it gives an equity, and the assignee of a certificate can complete the transfer upon the books except as against a *bona fide* purchaser who has acquired a title by such transfer, and there by acquired the legal title."

And that the law of this State ought to have control in matters of this kind in regard to a Missouri corporation is shown in a review of all the authorities on that subject in the case of *Merchants' National Bank* vs. *Richards*, 6 Mo. Appeals, 461. That is an elaborate opinion which was taken to the Supreme Court, and there the opinion of the Court of Appeals was affirmed in whole—its reasoning and its conclusions; so that the opinion of the Court of Appeals is really the opinion of the Supreme Court. In that case the Court says:

> "The right of a shareholder of a solvent corporation to make a sale of his shares is not in any way subject to the control of the corporation; and where he has made a sale he may compel a transfer upon the books of the corporation to his vendee. In case of a sale the transaction is complete on the delivery of the certificate with power to transfer and payment of the purchase money; and where these things are done, both the vendor and vendee have the legal right to have the transfer registered in the books of the company.
>
> "The stock certificates have a *quasi* negotiable character, and the custom has been held to be good and the certificates negotiable by repeated decisions in cases most carefully considered." Referring to—
>
> *Cartwright* vs. *Bank*, 20 Wendel, 91; 22 Wendel, 348;
>
> *McNeal* vs. *Bank*, 46 N. Y., 325.

In *Bank* vs. *Laird*, 11 Wallace, 377, Judge DAVIS says:

> "Such certificates, although neither in character nor form negotiable paper, approximate to it as nearly as practicable."

Now, the condition of this stock was this, it was sold, as we aver, by the complainants in this bill. It was sold on the stock market in New York. The certificate was transferred. Who are the holders of the certificates of that stock? They aver that they are ignorant on that subject. They aver that some may be held in Europe and some in this country. The custom has been to make these transfers; they pass from hand to hand, as Justice DAVIS says, as *quasi* negotiable paper.

The holder of them, unquestionably, as we say, is the owner of the stock; but according to the decisions of the courts only the equitable owner; the legal title still rests in the vendor. The vendor may exercise certain rights and privileges as the holder of the stock. He may vote it. Why? Because the stock stands in his name upon the registry of the company. But, how does he hold it? Not in his own right, not for his own benefit, because he has sold the stock. So far as he himself can give an evidence of a transfer he has transferred it. The holder of the stock has not thought proper to come and deprive him of the right to vote the stock, or to ask that it be transferred or put upon the transfer books of the company. He may, perhaps, receive dividends upon the stock, but those are not his dividends; they are dividends belonging to his vendee. He holds the legal title in his hands for the benefit of the vendee. He holds the right to vote the stock and to receive dividends upon it, if he may do so, as trustee for the vendee. In what other attitude can he be held to stand, except as a trustee for the vendee of the stock? Standing in that capacity, what are his duties in regard to that vendee? The vendee is not a

party to this proceeding; he knows nothing of this controversy. He holds the certificate of stock in his hand, passed to him for a valuable consideration for which he has paid. He has left the legal title in the hands of the vendor to be used by him; not for his own benefit, not for the benefit of the corporation, but solely for his own benefit, because he is the beneficial owner of that stock under the law. Then, I take it, the vendor has the right, upon well recognized principles of equity, to come into a Court of Equity and see that no detriment comes to the interest of his *cestui que trusts*. What other attitude can he stand in?

Now, who are the proper parties in proceedings in a Court of Equity? Who may ask the intervention of a Court of Equity, whether as complainants or defendants? Daniell in his work on Chancery Practice says:

> "The question, therefore, of who are necessary parties to a suit in respect to their interest in resisting the plaintiff's demands, resolves itself into two, namely, who are necessary parties, first, in respect of their immediate interest? and secondly, in respect of their consequential interest?
>
> "The reader's attention will be first directed to the question, who are necessary parties to a suit, in respect of their immediate interest in resisting the plaintiff's demand. And here it is to be observed, that where parties are spoken of as having an interest in the question, it is not intended to confine the definition to those only who are beneficially interested, but it is to be considered as extending to all persons who have any estate, either legal or equitable, in the subject matter, whether such estate be beneficial to themselves or not.
>
> "Under this definition are included all persons who fill the character of trustees of the property in dispute. But the rule is subject to exception, where the party is in the situation of a mere naked trustee, without any estate vested in him, in which case he need not, in general, be made a party. Thus, a broker or agent signing a contract in his own name for the purchase or sale of property, is not considered a necessary

party to a bill for a specific performance of such contract against his principal. And so, where a person having no interest in the matter joins with another who is, in a contract for sale; as where a man having gone through a fictitious ceremony of marriage with a woman, joins with her as her husband in an agreement to sell her property, he is not a necessary party to a suit to enforce the contract.

"In all cases, however, in which any estate is vested in an individual filling the character of trustee, or, if he has no estate, where the circumstances are such that in the event of the plaintiff succeeding in his suit the defendant may have a demand over against him, he is a necessary party. Thus in *Jones* vs. *Jones*, where a plaintiff sought to set aside a lease on the ground of forgery, without bringing before the court the trustees who were parties to the lease, and to whom the fraud was imputed, the objection for want of parties was allowed, because if the plaintiff prevailed, the defendant might have a remedy against the trustees. Upon the same principle, where the trustees of real estate had conveyed them over to purchasers, it was determined that on a bill by the *cestui que trusts* against the purchasers, the trustees were necessary parties."

Now, the vendor in this case is not a mere agent or attorney for the vendee. The simplest and most generally accepted test in determining whether one is a proper complainant to a bill for injunction is, whether he possesses a legal or equitable interest in the subject matter of the controversy. (2 High on Injunctions.) It is commonly said that a trust is created by a contract for the sale of lands, that the vendor holds the title in trust for the vendee, but this is not a constructive trust, it is rather an express trust. (2 Pomeroy on Equity Jurisprudence, 619.) Survivors of a partnership hold the partnership property in trust. The trustee is bound to protect the trust property in every reasonable manner during the continuance of the trust. (2 Pomeroy on Equity Jurisprudence, Sec. 1,067.) They are

bound to exercise care and prudence in the execution of their trust. A trustee, in other words, must exercise the same care, skill, diligence and prudence in his management of the trust and in his dealings with the trust property which a man of ordinary care, skill and diligence would use in his own transactions and with his own property under like circumstances. This rule applies to all transactions in connection with the trust property by which the interests of the beneficiary can be protected. But in regard to the vendor, the vendor is trustee for the vendee for the whole title. (1 Pomeroy, Sec. 368, and cases cited in note.)

The vendor is the trustee of the property for the purchaser; the purchaser is the real beneficial owner. The vendor is not a mere dormant trustee, he is a trustee having a personal and substantial interest in the property, a right to protect that interest, and a right to assert that interest, if anything should be done in derogation of it. We aver in this bill that under the proceedings instituted in the Circuit Court of the City of St. Louis, the purchaser at this sale obtained an execution against the Memphis, Carthage & Northwestern Railway Company, which was returned *nulla bona*, and that upon the return of that execution a judgment was rendered, or rather an awarded execution was made by the Circuit Court against these complainants as stockholders of that company; that upon that pretended execution this sale was made; that notice was given that a transfer had been made by them of the ownership of this stock before that sale took place, but that notwithstanding this notice the sale was actually made by the sheriff.

In what attitude, then, would the true owners of that stock, who are ignorant of these proceedings, stand? The property which has been sold to them, and which, if that sale be valid, as we aver it is, they could compel to be transferred to them upon the books of the company, is about to be transferred upon the books of the company to the purchaser at

this sale, by which the *prima facie* legal title, such legal title as will authorize them to be considered by the other stockholders as stockholders on the books of the company thus giving them an interest and control over the property which, in truth and in fact, does not belong to them.

It is unnecessary for me to say that that condition of things would prejudice the rights of the vendee in regard to that stock. Is it the duty of the vendor, who is brought into contact with these proceedings, who is a party to these proceedings, who holds in his hands the legal title to that stock, being authorized to vote it until a transfer is made to somebody else upon the books of the company, and to vote it as trustee for the benefit of his *cestui que trust*, the beneficial owner of the stock, is he to stand up and see this thing done, and to be able to say that he has performed his whole duty as trustee for the holder of that stock?

The situation, then, is this: That we have made a sale of this stock, which is to a certain extent executory. We have made a contract of sale; have received the full consideration, and have transferred the equitable ownership, but not the legal title or apparent legal title. The stock still stands in our name on the books of the company. That gives us the apparent title, and the legal right of voting that stock. That exposed the stock to the seizure upon the alleged process and claim against us, and that status of ours, such as it is, is the sole ground work and foundation of the claim to the stock which is attempted to be enforced.

It seems, therefore, that our position—the position of the Seligmans is, that we hold the stock in a trust capacity. For account of the true and beneficial owner we have made a sale, and have not fully completed the delivery, although we have received the full consideration; similar to the sale of merchandise, where possession still remains in the vendor,

we have possession of the subject of the sale. It is true the legal title, and many of the incidents of ownership as to voting, &c., rests in the registry of the company's books in our name; our vendee is entitled to have them in his name; we have put him in the way of getting it, but as yet he has not obtained it. We have transferred to him the certificate merely. So much of our own complete delivery to him is not executed, but is executory. We are bound to its completion, or certainly not to interfere with its completion, or to permit anyone else to interfere with it, either by direct act, or by suffering it to be taken to pay an alleged debt against us.

Suffering it to be so taken, would clearly be as complete a breach of our obligation to make the transfer and delivery complete and effectual as any direct act of ours preventing the transfer being made from our name to our vendor's name. Can it be doubted, under the circumstances, if we suffer the stock, which really belongs in equity, to the vendee, to be seized and sold to pay our real debt, and thus, to get it paid at his cost and loss, we would be held legally bound to respond to him for the amount, although he would have recourse on the property? He does not loose his title to the property, yet having permitted his property to be seized he would have a claim against us, and he might take his election as to which remedy he would pursue. Assuming that to be so, we come to present the case in our answer, that the property which equitably belongs to the vendee, is in our possession and its legal title which stands in our name is sought to be taken to pay a pretended debt of ours, which we say is not a real debt, and upon an apparent process against us, which is invalid, and gives no right of seizure as against us. The debt was not a real debt upon which this judgment was rendered, because we were not stockholders of the Memphis, Carthage and Northwestern Railroad Company, as has been held by this Court in the case of *Burgess*

vs. *Seligman*, 107 U. S., p. 20. This, however, is a personal issue and the vendee of the stock has nothing to do with it. The innocent purchaser from us, who has not yet got possession of what he bought and paid for has nothing to do with this issue. It is for us to have that question adjudicated between ourselves and the alleged creditors whose demand we dispute.

The issues raised by the pleadings then, are—

1. That the judgment upon which the sale was made was not a good judgment.

Because we owed no debt to the plaintiff as stockholder of the Memphis, Carthage and Northwestern Railroad Company.

Because we were not served with process in the case in which the judgment was rendered.

2. That even if the judgment was good, we were not the owners of the stock, had sold it long before, and held the legal title in trust for other parties. With these issues the railroad company has no concern; but it is a separate and distinct controversy between the plaintiff Wilson and these defendants, and the railroad company is a mere nominal party to the suit.

JAMES O. BROADHEAD,
Attorney for Seligmans.

114-60

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, JESSE SELIGMAN AND JAMES SELIGMAN,
Plaintiffs in Error and Appellants.
vs.
WILLIAM C. WILSON,
Defendant in Error.
} *No. 1194.*

STATEMENT AND ARGUMENT FOR DEFENDANT IN ERROR.

JAMES. S. BOTSFORD,
Attorney for ~~Appellee~~ Defendant in Error.

Pierce Bros., Printers, 118 North Third Street, St. Louis.

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STATEMENT.

This suit was brought in the Circuit Court for the City of St. Louis, Missouri, by Wilson, the defendant in error, as plaintiff, against the St. Louis and San Francisco Railway Company, and the Seligmans, plaintiffs in error, as defendants. The suit, although according to the code, was an action in equity as distinguished from an action at law. The suit was removed from the Circuit Court to the United States Circuit Court for the Eastern District of Missouri, and, on a motion to remand, was remanded to the state court, and the case is here on appeal, under the fifth section of the Act of March 3d, 1875, from said order remanding the case to the state court.

Wilson, the defendant in error, is a citizen of the State of Missouri. The defendant, the St. Louis and San Francisco Railway Company, is a corporation created under the laws of the State of Missouri, and hence is a citizen of that state. The Seligmans are citizens of the State of New York.

The removal from the state court to the court below was taken by the Seligmans under the second clause of the second section of said Act of March 3d, 1875.

The motion to remand was made by Wilson, and was sustained by Mr. Justice Miller, who presided in the court below. The petition for the removal of the cause may be found at page 26 of the printed record. The motion to remand may be found at pages 27 and 28 of the printed record, and the opinion of Mr. Justice Miller, sustaining the motion to remand, may be found at pages 29, 30 and 31 of the printed record.

ARGUMENT.

I.

The removal of this case cannot be sustained under the Judiciary Act of 1789, which now constitutes the first clause of Section 639 of the Revised Statutes of the United States, and which authorizes a removal "when the suit is against an alien, or is by a citizen of the state wherein it is brought, and against a citizen of another state, it may be removed on the petition of such defendant, filed in said state court at the time of entering his appearance in said state court."

Case of Sewing Machine Co.'s, 18 Wall., 553.

II.

The removal can not be sustained under the Act of 1866, which constitutes the second clause of said section 639, for

the reason that that provision has been repealed by the Act of March 3d, 1875.

Hyde v. Ruble, 104 U. S., 407.

King v. Cornell, 106 U. S., 395.

III.

The removal can not be sustained under the PrejudiceAct of 1867, which constitutes the third clause of that section (Case of Sewing Machine Company, 18 Wallace, 553). There was no affidavit of local prejudice, and the petition for removal was made by the Seligmans alone, and not by all the defendants.

IV.

Nor is the case removable under the first clause of section of the Act of March 3d, 1875 (18 Stat. at Large, p. 470), because all the parties on one side of the controversy in this case, are not citizens of different States from those on the other (Removal Cases, 100 U. S., 457; Blake v. McKim, 103 U. S., 336). The rule in this respect is the same under the first clause of said second section of the Act of March 3, 1875, as under the Prejudice Act of 1867 and the Judiciary Act of 1789. And it is the settled doctrine of this court that the parties on both sides of the controversy must be citizens of different states in order to make the case removable under the first clause of the second section of the Act of March 3, 1875, the same as under the Judiciary Act of 1789 and the Prejudice Act of 1867. There is, however, this qualification that has been made by the decisions of this court under the first clause of said second section, that while the parties to the controversy must be citizens of different States, the court may transpose the parties as they are arranged by the pleadings according to their real relation to the controversy, and if, after such transposition, the parties thus arranged are citizens of different states, then the case may be removed under said first clause of said sec-

ond section. Thus, in Removal Cases, this court, by Mr. Chief Justice Waite, used the following language:

"This we understand to mean that when the controversy "about which a suit in the state court is brought, is be- "tween citizens of one or more states on one side, and cit- "izens of other states on the other side, either party to the "controversy may remove the suit to the Circuit Court, "without regard to the position they occupy in the plead- "ings as plaintiffs or defendants. For the purposes of a "removal, the matter in dispute may be ascertained, and "the parties to the suit arranged on opposite sides of "that dispute. If, in such an arrangement, it appears that "those on one side are all citizens of different states from "these on the other, the suit may be removed. Under the "old law, the pleadings only were looked at, and the "rights of the parties in respect to a removal were deter- "mined solely according to the position they occupied as "plaintiffs or defendants in the suit (Cole Co. v. Blatch- "ford, 11 Wall., 174). Under the new law, the mere "form of the pleadings may be put aside, and the parties "placed on different sides of the matter in dispute, accord- "ing to the facts. This being done, when all those on one "side desire a removal, it may be had, if the necessary cit- "izenship exists."

The removal in this case, therefore, can not be sustained under the first clause of said second section, if it relates to a single controversy in which the defendant railway company and the Seligmans are on one side, and Mr. Wilson, the plaintiff, is on the other side. Unless the defendant railway company can be placed on the same side of the controversy with Mr. Wilson, the case could not manifestly be removed under said first clause. If the railway company is on the same side of the controversy with the Seligmans, then, the removal can not be sustained; for the reason that the parties thus arranged are not citizens of different states, and for the further reason that in this case the railway com-

pany did not join with the Seligmans in making the removal, as was required by said first clause of said second section.

Can the parties be transposed in this case and the railway company be arranged in the controversy on the same side with Mr. Wilson? To answer this question will require a brief statement at this point of the issues made by the pleadings in the case.

The pleading of the plaintiff is a petition under the Missouri code. The case, as before stated, is in equity. The petition sets out that the plaintiff, Wilson, in the month of December, 1883, recovered a judgment in the St. Louis Circuit Court against Jesse and James Seligman for about $75,000; that on that judgment an execution was duly issued out of the office of the clerk of the Circuit Court of the City of St. Louis, and placed in the hands of the sheriff; that the Seligmans were the owners of a large amount of stock in the defendant corporation, The St. Louis & San Francisco Railway Company; that that company had its headquarters in said City of St. Louis, and was required by the laws of Missouri to keep a stock and transfer book, which evidenced the ownership of this stock; and that the Seligmans owned said stock in the defendant railway company, as appeared from the said stock and transfer book thereof. The execution laws of the State of Missouri provide that stock in a Missouri corporation, like the defendant railway company, may be levied upon and sold under an execution at law; and this provision is applicable alike to the stock held in Missouri corporations by residents and non-residents of that state. The statute upon the subject is in the following language:

"When an execution shall be issued against any person "being the owner of any shares or stock in any bank, in- "surance company or other corporation, it shall be the duty "of the cashier, secretary or other chief clerk of such bank, "insurance company or other corporation, upon the request "of the officer having such execution, to furnish him with a "certificate, under his hand, stating the number of rights or

"shares the defendant holds in the stock of such bank, "company or corporation, with the incumbrance thereon. "The officer, upon obtaining such information, or in any "other manner, may make a levy of such execution on "such rights or shares, by leaving a true copy of such writ "with the cashier, secretary or chief clerk; and, if there "be no such officer, then with some other officer of such "bank, company or corporation, with an attested certifi- "cate by the officer making the levy, that he levies upon "and takes such rights and shares to satisfy such execu- "tion." (R. S. Mo., 1879, §§ 2363, 2364.)

The petition further set out that the sheriff of the City of St. Louis levied Wilson's execution against the Seligmans upon this stock owned by them in the defendant railway company, and advertised it for sale; that pursuant to the execution laws of Missouri the sale took place and the stock was sold and bought in by the plaintiff, Wilson. There is an averment in the petition that the attorney of the Seligmans, and also the general attorney of the St. Louis & San Francisco Railway Company, were present at this sale, and that they made a certain statement regarding the ownership of this stock for the purpose of deterring bidders from bidding at the sale; that, in consequence of this statement made by these gentlemen, acting in combination with each other, purchasers were deterred from bidding, and the plaintiff was compelled to buy, and did buy the stock in himself, at his own sale.

The petition further sets out that, acting under the execution laws of Missouri, the sheriff made a bill of sale to the plaintiff for this stock, which bill of sale was made under the following provision of the Missouri Statutes:

"When any rights or shares of stock in any bank, com- "pany or corporation shall be sold, the officer making such "sale shall execute an instrument in writing, reciting the "sale and payment of the consideration, and conveying to "the purchaser such rights and shares; and shall also leave "with the cashier, secretary or chief clerk, or, if there be

"none, with any other officer of such bank, corporation or "company, a copy of the execution and his return thereon; "and the purchaser shall thereupon be entitled to all divi- "dends and stock, and to the same privileges as a member "of such company or corporation as such debtor was en- "titled to." (R. S. Mo., 1879, § 2391.)

The petition further states that the bill of sale thus made by the sheriff to Wilson was by him presented to the officers of the railway company, and a demand made that the plaintiff be registered on the stock books of the railway company as the owner of this stock, and that the company issue to him certificates for the stock.

The petition states that this demand was refused, and that the company refused to register the plaintiff as a stockholder or to issue him certificates.

The petition further states that the railway company, while having an extended line, is covered by a large mortgage, and that a judgment at law against the company would be an inadequate remedy. This averment was inserted in the petition as a reason for suing in equity instead of bringing an action at law for damages against the railway company for its refusal to register Wilson as a stockholder.

The prayer of the petition is in the following language:

1. "That said defendant corporation may be compelled by "the order and decree of this court to place said plaintiff's "name on the transfer stock books of said corporation as "the owner of said shares of first preferred and preferred "and common stock of said corporation so purchased by "him as aforesaid, and to issue to this plaintiff certificates "for all of said shares of stock as such owner."

2. "That said defendant corporation be required and di- "rected to pay to this plaintiff all dividends that may be "due or become due and payable on said stock since the "said 18th day of December, 1883, and that it be ordered "and decreed to allow and permit plaintiff to exercise all "the rights and privileges of a member of said corporation "as the owner of said shares of stock, to participate in and

" vote said shares of stock at said meeting for the election " of said directors, and to participate in and vote at all " other meetings of said stockholders of said corporation, " and that said defendant corporation be enjoined in the " meantime from permitting the other defendants herein to " exercise any such rights and privileges as stockholders by " reason of said stock so standing on the transfer books of " said corporation in the said firm name of J. & W. Seligman & Co.; that all the right, title and interest which " the said Jesse and James Seligman had in and to said " shares of capital stock so purchased by plaintiff as aforesaid be decreed to be in plaintiff by reason of his said " purchase and as the owner thereof; that said defendants, " Jesse and James Seligman, be enjoined and restrained " from exercising the rights of stockholders in said corporation as the holders or owners of said stock, or from " claiming any right or title to the same, or to vote the same " at any meeting of said stockholders of said corporation, " or from receiving any dividends thereon, and that they " be required to deliver up for cancellation all the said " shares of stock issued to them and standing in the said " firm name of J. & W. Seligman & Co., and for such " other and further general relief in the premises as may " be just and equitable."

Now, regarding the status of the Seligmans as parties to this suit, it is proper to say here that they were made parties and brought into court under what may be termed the publication statute of Missouri. The practice act of Missouri authorizes, when the issue affects the title to property in this state, all non-resident parties who claim that property to be brought into court by publication. This being a suit to affect the title to this stock, considered as property, in the State of Missouri, subject to execution sale here, the Seligmans were made parties, not as necessary parties, but as proper parties who claim title to this stock, and they were brought in as before stated under our publication statute.

That statute authorizes publication as to non-resident defendants, and permits, at the election of the plaintiff, a service on the non-resident, such as was had in this case in the state where the non-resident lived, of process of summons, which had the same and no greater effect than if the non-residents were brought into court by publication. (Rev. Stat. of Mo. 1879, Secs. 3494 and 3501.)

I mention this to show to the court that while there is a prayer in the petition against the Seligmans as well as against the railway company, that if the Seligmans had chosen not to enter their personal appearance in this suit in the courts of this state, the scope of the relief as against them could only be measured by the control the court gained over the property. Assuming that the stock is personal property having its *situs* in the State of Missouri, and subject to execution sale in Missouri, whether owned by a resident or non-resident, the court could only render such a decree in this case, if the Seligmans had not entered their personal appearance, as would bind the ownership of the stock. The court could not render a decree binding the Seligmans by any judgment operating on them *in personam*, by way of directing them to deliver up the certificates, or anything of that kind. But the Seligmans chose to enter their voluntary appearance, and to contest the case made by the plaintiff, Wilson, in his petition. The Seligmans and the railway company answered separately.

The railway company answered by its general counsel and solicitor, Mr. O'Day. And the Seligmans answered separately by their counsel, Mr. Broadhead. The answers of the defendants, while separate, and while couched in different phraseology, are substantially the same. Each answer proceeds, after admitting some of the unimportant formal averments of the petition, to deny all the substantial averments which it contains, either by positive denial or by denying any information or belief, which under the Missouri code is equivalent to a general denial. Each answer proceeds to set out that the Seligmans did not own this stock,

at the time of the rendition of this judgment against them and the execution proceedings; that, while their names stood on the books of the company as the owners of the stock, that they had transferred it, not according to the laws of the State of Missouri, but according to the rules of the Stock Exchange of New York. Each answer further sets out the pendency of another cause between the same parties in another court involving the same controversy. To these answers of the defendants, the plaintiff, Wilson, filed replications putting in issue the new matter thus pleaded by those answers. The cause was thus at issue when the Seligmans removed the same from the state court. The petition is at pages 3, 4, 5, 6, 7, 8, 9 and 10 of the printed record. The answer of the Seligmans is at pages 13, 14, 15, 16, 17, 18 and 19 of the printed record. The answer of the railway company is at pages 20, 21, 22, 23 and 24 of the printed record. The replications of Wilson are at page 25 of the printed record.

The foregoing statement from the pleadings, of the controversy between these parties, shows at once that the railway company can not be arranged, as respects that controversy, on the same side of it with Wilson. The relations of the railway company to the plaintiff in the controversy are the same as the relation of the Seligmans. The issue involves a single controversy The railway company can not be classed in that controversy on the same side with Mr. Wilson. This is as certain as anything can be. The controversy grows out of the refusal of the railway company to recognize Mr. Wilson's bill of sale given to him by the sheriff, and to place him upon its stock and transfer books as the owner and holder of his purchased stock, and to issue him certificates therefor. If the railroad company had not refused Wilson's demand, so made, there would now be no controversy. This suit involves the same controversy as an action at law by Wilson against the railway company for damages for its refusal. The form of action is different, but the controversy is the same whether Wilson sues at law

for damages, or in equity to compel a delivery to him of the stock. In the law action the controversy would be between Wilson and the railway company alone. The Seligmans could not be made parties, with the railway company, to a law action against the railway company for damages. In that case the Seligmans would neither be necessary nor proper parties. A controversy may give rise to various forms of action, legal and equitable, but it is the controversy and not the cause of action, which, under the removal acts, warrants the removal. And if the controversy in this cause be the same as if the action was at law against the railway company alone, the railway company cannot be classed in the controversy on the side with Mr. Wilson so as to make the suit removable nuder the first clause of the second section of the Act of March 3, 1875. Apart from that, we have this singular state of affairs. Under the doctrine of this court, stockholders of a company are considered, for all purposes of jurisdiction in the Federal courts, as citizens of the same state with the corporation of which they are members. The Seligmans, therefore, as members of the St. Louis and San Francisco Railway Company, must be taken in the court below to be citizens of Missouri, else that court could not take jurisdiction of any suit by or against the St. Louis and San Francisco Railway Company. It is the doctrine of this court that the members of a corporation are conclusively presumed to be citizens of the state which created the corporation of which they are members. If, therefore, the court below could take jurisdiction of the St. Louis and San Francisco Railway Company, it is on the ground that the members of that corporation, including the Seligmans, are conclusively presumed to be citizens of the State of Missouri. In this case the Seligmans are before the court in their character as stockholders of the St. Louis and San Francisco Railway Company. This consideration furnishes an additional reason why the railway company can not be arraigned on the same side of the controversy with Wilson and

against the Seligmans. The controversy is by Mr. Wilson, who is a stranger to the corporation and its members, and is against a corporation and its members with regard to their stock and membership in that corporation. This case is unlike that of Harter v. Kernochan, 103 U. S., p. 562. That was a case which arose in the State of Illinois, where a tax-payer, living in that state, brought a suit in equity against the officers of the municipality in which he lived, and made a foreign bondholder who held the bonds of the municipality a party, and in which he sought to enjoin the levy of taxes to pay those bonds. The case was removed from the state to the Federal court by the foreign bondholder, and the removal was sustained by this court. In the opinion delivered by Mr. Justice Harlan, the following language was used:

"We do not doubt that the suit was one which the defendant was entitled, under the Act of March 3, 1875, chap. 173, to remove from the state court. Disregarding, as we may do, the particular position, whether as complainants or defendants, assigned to the parties by the draughtsman of the bill, it is apparent that the sole matter in dispute is the liability of the township upon the bonds; that upon one side of that dispute are all of the state, county and township officers and tax-payers, who are made parties, while upon the other is Kernochan, the owner of the bonds whose validity is questioned by this suit. He alone of all the parties is, in a legal sense, interested in the enforcement of liability upon the township. It is, therefore, a suit in which there is a single controversy embracing the whole suit, between citizens of different states, one side of which is represented alone by Kernochan, a citizen of Massachusetts, and the other by citizens of Illinois. Removal Cases, 100 U. S., 457."

In conclusion, I submit that the controversy in this case is between Wilson on the one side and the railway company

and the Seligmans on the other side, and that the parties thus arraigned not being citizens of different states, the removal cannot be sustained under the first clause of said second section.

V.

Can the removal be sustained under the second clause of said second section? We submit that it can not.

The language of the petition for removal is as follows:

"That said plaintiff is a citizen of the State of Missouri, "and that these petitioners, Jesse and James Seligman, are "citizens of the State of New York; that there is in said "suit a controversy wholly between citizens of different "states, which can be fully determined as between them "without the presence of the defendant, The St. Louis and "San Francisco Railroad. That there is in said suit a "separate controversy wholly between said plaintiff and "your petitioners, citizens of different states, as aforesaid, "which can be fully determined as between them, and your "petitioners are actually interested in said controversy; "that the controversy in said suit between plaintiff and "your petitioners as made by the pleadings, is wholly dis-"tinct and separate from that between plaintiff and the St. "Louis and San Francisco Railway Company."

This citation from the petition for removal shows that the removal was made under the second clause of said second section, and not under the first clause. Said second clause reads as follows:

"And when in any suit mentioned in this section there shall "be a controversy which is wholly between citizens of "different states, and which can be fully determined as "between them, then either one more of the plaintiff or "defendants actually interested in such controversy may "remove said suit into the Circuit Court of the United "States for the proper district."

Under this clause the controversy must be wholly "be-

tween citizens of different states." The word "wholly" in this connection means the same as the word "exclusively." The controversy must be exclusively between citizens of different states. In the case of Barney v. Latham, 103 U. S., 205, there were two separable controversies. In that case one controversy was between the plaintiff and the Land Company about some land, and the other controversy was between the plaintiff and the projectors of the corporation about some money. The controversy about the land was "wholly" between the plaintiff and the Land Company, a corporation of another state. But that case is wholly unlike the one now before the court. Here we have a case with a single controversy. That controversy is not "wholly" between the plaintiff and the Seligmans, or "wholly" between the plaintiff and the railway company. It is one single, entire controversy between the plaintiff Wilson on the one hand, and the railway company and the Seligmans on the other. In this case the railway company is a necessary party.

(Johnson v. King, Chicago Leg. News, Aug. 23d, 1884).

Indeed, the main relief sought is against the railway company. And if, as we have seen, the Seligmans had not entered their voluntary appearance to this suit in this state, no relief could have gone against them, except so far as the decree vesting the ownership of the stock in Wilson would bind the Seligmans. The statement, therefore, in the petition for removal, that there is in this suit a separate controversy "wholly between said plaintiff and your petitioners, citizens of different states, as aforesaid, which can be fully determined as between them," is not true. And the same is true of the further statement of said petition for removal, that there is in this suit a controversy "wholly between citizens of different states, which can be fully determined as between them without the presence of the defendant, the St. Louis and San Francisco Railway Company."

If a law action against the railway company for damages would present but a single controversy, then we submit that this case presents but a single controversy. And if the law action could not be removed to the Federal court, then we submit that this case can not be removed. The controversy in each case is the same, and the consideration that in this case the Seligmans are joined as proper parties, does not any more make the case cognizable in the Federal court than the law action would be. The case of Blake v. McKim, 103 U. S., 336, was a case commenced in one of the courts of Massachusetts by a citizen of that state against the executors of Blake, two of whom were citizens of that state and one a citizen of the State of New York. In that case the executors had no more interest in the controversy than the railway company has here. And the decisions of this court will show that it is not the interest of the parties to the controversy in the subject matter thereof which decides the question of jurisdiction. In that case this court uses the following language:

"It is to be presumed that Congress, in enacting the "statute of 1875, had in view as well the previous enact- "ments, regulating the removal of causes from the state "courts, as the decisions of this court upon them. If it "was thereby intended to invest the circuit courts with ju- "risdiction of all controversies between citizens of differ- "ent states, although others might be indispensable parties "thereto, such intention would have been expressed in "more explicit language. We are not disposed to enlarge "that jurisdiction by mere construction. We are of opin- "ion that Congress, in determining the jurisdiction of the "circuit courts over controversies between citizens of dif- "ferent states, has not distinctly provided for the removal "from a state court of a suit in which there is a contro- "versy not wholly between citizens of different states, "and to the full or final determination of which one of the "indispensable parties, plaintiffs or defendants, on the side "seeking the removal, is a citizen of the same state with

" one or more of the plaintiffs or defendants against whom " the removal is asked."

The case of Hyde v. Ruble, 104 U. S., 409, was a suit by Ruble & Green in the State Court of Minnesota upon an alleged contract of bailment made by the defendants as partners; the plaintiffs were citizens of Minnesota, and only one defendant was a citizen of that state, and the others were citizens of some other state. In the opinion of the court, Mr. Chief Justice Waite, after passing on the first clause of the second section, uses the following language:

" Neither do we think it was removable under the second " clause of the same section, on the ground that there was " in the suit a separate controversy wholly between citizens " of different states. To entitle a party to a removal under " this clause there must exist in the suit a separate and dis- " tinct cause of action in respect to which all the necessary " parties on one side are citizens of different states from those " on the other. Thus, in Barney v. Latham (103 *id.*, 205), " two separate and distinct controversies were directly in- " volved; one as to the lands held by the Winona & St. " Peter Land Company, in respect to which the land " company was the only necessary party on one side and " the plaintiff on the other; and the second as to the " moneys collected from the sales of lands before the land " company was formed, and as to which only the natural " persons named as defendants were the necessary party on " one side and the plaintiffs on the other. One was a con- " troversy about the land and the other about the money. " Separate suits, each distinct in itself, might have been " properly brought on these two separate causes of action, " and complete relief afforded in each suit as to the partic- " ular controversy involved. In that about the land, the " land company would have been the only necessary defend- " ant; and in that about the money, the natural persons " need only have been brought in. In that about the land " there could not have been a removal, because the parties

" on both sides would have been citizens of the same state;
" while in that about the money there could have been, as
" the plaintiffs would all be citizens of one state,
" while defendants would all be citizens of another. When
" two such causes of action were found united in one
" suit, we held in the case last cited there could be a removal
" of the whole suit on the petition of one or more of the
" plaintiffs or defendants interested in the controversy,
" which, if it had been sued on alone, would be removable.
" But that, we think, does not meet the requirements of this
" case. This suit presents but a single cause of action;
" that is to say, a single controversy. The issues made by
" the pleadings do not create separate controversies, but
" only show the questions which are in dispute between the
" parties as to their one controversy. The suit is, there-
" fore, governed by the principles applied in Removal Cases
" and Blake v. McKim, rather than those in Barney v. La-
" tham, and was properly remanded."

I submit, that under the settled doctrine of this court, a case can not be removed under the second clause of the second section unless it involves two distinct controversies between different parties. There must be a controversy in the case which is wholly between the plaintiff and non-resident defendants, and which can be fully determined as between them without the presence of the other parties. How can the case at bar be disposed of without the presence of the railway company? The dismissal of the case as to the railway company would operate in effect as a dismissal of the entire cause.

I refer the court to the following further authorities: Fraser v. Gennison, 106 U. S. 191; Winchester v. Loud, 108 U. S. 130; Shainwald v. Lewis, 108 U. S. 158.

The case of Winchester against Loud, was a suit in equity begun in the state court of Michigan by Load, a citizen of that state against Winchester and Whiting, citizens of Massachusetts, and Wasey, Loud, and Gay, citizens of Michigan,

and removed to the Circuit Court of the United States for the eastern district of Michigan, at the instance of defendant, Winchester, on the ground, as stated in the petition for removal, that the principal controversy in said suit is wholly between said plaintiff, Henry M. Loud, and the petitioner, Winchester, who are citizens of different states, and which controversy can be fully determined as between them, and that the petitioner is actually interested in said controversy. The Federal court remanded the suit to the state court. An appeal was taken from that order to this court. Mr. Chief Justice Waite, speaking for the court, uses this language:

"The petition for removal was filed before answer, and "we must look, therefore, to the bill alone, to determine "what the controversy is. From this it appears that Henry "M. Loud claims that the defendants, Wasey, Henry M. "Loud and Whiting hold certain real and personal proper- "ty in trust to secure a debt owing by him and the defend- "ant Gay to the defendant Winchester, and, after the debt "is paid, for the use and benefit of himself and Gay. He "asks for an accounting by the trustees, the removal of "Wasey and Whiting, and the appointment of others in "their places, and, after the debt is paid, a conveyance of "of what remains of the trust property in accordance "with the terms of the trust. The case presents but a "single controversy, although it involves the determination "of several questions. It may be that Winchester is the "principal defendant in interest, but full and complete relief "cannot be afforded in respect to the single cause of "action, to-wit., the trust, without the presence of all the "parties to the suit. According to the averments in the "bill all the defendants, except Henry M. Loud, deny the "existence of the trust, and if that should be established, all "the defendants are directly interested in the relief that is "asked. The case falls clearly within the rule stated in "Hyde v. Ruble, 104 U. S., 407."

We repeat the question: Can this controversy be determined in this case, or in any other case that might be brought thereon, without the presence of the railway company? We are not called upon to determine how another case might be adjudged, but the question is, how can this controversy be determined without the presence of the railway company? How can this case, as brought by the plaintiff, be adjudged without the railway company being before the court? This case can not be determined without the presence of the railway company. The railway company, although not a principal party interested in the subject of the controversy, is a necessary party; and, if the case involves a single controversy between the plaintiff, Wilson on the one side, and the railway company and the Seligmans on the other, then the case is not removable to the Federal Court. In order to be removable, it must be a controversy exclusively between the plaintiff and the Seligmans, and which can be fully determined in this case, as brought by the plaintiff, without the presence, in the language of the petition for removal, of the railway company in the case.

I submit that the judgment of the court below should be affirmed.

JAMES S. BOTSFORD,

For the Defendant in Error.